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THE

ENGLISH WORKS

OF

THOMAS HOBBES

OF MALMESBURY;

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BY

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A

DIALOGUE

BETWEEN

A PHILOSOPHER & A STUDENT

OF

THE COMMON LAWS OF ENGLAND.

A DIALOGUE

OF

THE COMMON LAW.

Of the law of reason

Lawyer. WHAT makes you say, that the study of the law is less rational than the study of the mathematics?

Philosopher. I say not that; for all study is rational, or nothing worth: but I say, that the great masters of the *mathematics* do not so often err as the great professors of the law.

L. If you had applied your reason to the law, perhaps you would have been of another mind.

P. In whatsoever study, I examine whether my inference be rational: and have looked over the titles of the statutes from Magna Charta downward to this present time. I left not one unread, which I thought might concern myself; which was enough for me, that meant not to plead for any but myself. But I did not much examine which of them was more or less rational; because I read them not to dispute, but to obey them, and saw in all of them sufficient reason for my obedience, and that the same reason, though the Statutes themselves were changed, remained constant. I have also diligently read over Littleton's book of *Tenures*, with the commentaries thereupon of the renowned lawyer Sir Edward Coke; in which I confess I found great subtilty, not of the law, but

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of inference from law, and especially from the law of human nature, which is the law of reason: and I confess that it is truth which he says in the epilogue to his book, that by arguments and reason in the law, a man shall sooner come to the certainty and knowledge of the law: and I agree with Sir Edward Coke, who upon that text farther says, that reason is the soul of the law; and upon section 138, *nihil, quod est contra rationem, est licitum;* that is to say, nothing is law that is against reason; and that reason is the life of the law, nay the common law itself is nothing else but reason; and upon section 21, *æquitas est perfecta quædam ratio, quæ jus scriptum interpretatur et emendat, nulla scriptura comprehensa, sed solum in vera ratione consistens; i. e.* Equity is a certain perfect reason, that interpreteth and amendeth the law written, itself being unwritten, and consisting in nothing else but right reason. When I consider this, and find it to be true, and so evident as not to be denied by any man of right sense, I find my own reason at a stand; for it frustrates all the laws in the world. For upon this ground any man, of any law whatsoever, may say it is against reason, and thereupon make a pretence for his disobedience. I pray you clear this passage, that we may proceed.

L. I clear it thus, out of Sir Edward Coke (1. Inst. sect. 138), that this is to be understood of an artificial perfection of reason, gotten by long study, observation, and experience, and not of every man's natural reason; for *nemo nascitur artifex.* This legal reason is *summa ratio;* and therefore if all the reason that is dispersed into so

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many several heads, were united into one, yet could he not make such a law as the law of England is; because by so many successions of ages it hath been fined and refined by an infinite number of grave and learned men.

P. This does not clear the place, as being partly obscure, and partly untrue. That the reason which is the life of the law, should be not natural, but artificial, I cannot conceive. I understand well enough, that the knowledge of the law is gotten by much study, as all other sciences are, which when they are studied and obtained, it is still done by natural, and not by artificial reason. I grant you, that the knowledge of the law is an art; but not that any art of one man, or of many, how wise soever they be, or the work of one or more artificers, how perfect soever it be, is law. It is not wisdom, but authority that makes a law. Obscure also are the words *legal reason.* There is no reason in earthly creatures, but human reason. But I suppose that he means, that the reason of a judge, or of all the judges together without the King, is that *summa ratio,* and the very law: which I deny, because none can make a law but he that hath the legislative power. That the law hath been fined by grave and learned men, meaning the professors of the law, is manifestly untrue; for all the laws of England have been made by the kings of England, consulting with the nobility and commons in parliament, of which not one of twenty was a learned lawyer.

L. You speak of the statute law, and I speak of the common law.

P. I speak generally of law.

Of the law of reason.

L. Thus far I agree with you, that statute law taken away, there would not be left, either here, or any where, any law at all that would conduce to the peace of a nation; yet equity and reason, (laws Divine and eternal, which oblige all men at all times, and in all places), would still remain, but be obeyed by few: and though the breach of them be not punished in this world, yet they will be punished sufficiently in the world to come. Sir Edward Coke, for, drawing to the men of his own profession as much authority as lawfully he might, is not to be reprehended; but to the gravity and learning of the judges they ought to have added in the making of laws, the authority of the King, which hath the sovereignty: for of these laws of reason, every subject that is in his wits, is bound to take notice at his peril, because reason is part of his nature, which he continually carries about with him, and may read it, if he will.

P. It is very true; and upon this ground, if I pretend within a month or two to make myself able to perform the office of a judge, you are not to think it arrogance; for you are to allow to me, as well as to other men, my pretence to reason, which is the common law, (remember this, that I may not need again to put you in mind, that reason is the common law): and for statute law, seeing it is printed, and that there be indexes to point me to every matter contained in them, I think a man may profit in them very much in two months.

L. But you will be but an ill pleader.

P. A pleader commonly thinks he ought to say all he can for the benefit of his client, and therefore has need of a faculty to wrest the sense of

words from their true meaning, and the faculty of *rhetoric* to seduce the jury, and sometimes the judge also, and many other arts which I neither have, nor intend to study. Of the law of reason.

L. But let the judge, how good soever he thinks his reasoning, take heed that he depart not too much from the letter of the statute: for it is not without danger.

P. He may without danger recede from the letter, if he do not from the meaning and sense of the law; which may be by a learned man, (such as judges commonly are,) easily found out by the preamble, the time when it was made, and the incommodities for which it was made. But I pray tell me, to what end were statute laws ordained, seeing the law of reason ought to be applied to every controversy that can arise.

L. You are not ignorant of the force of an irregular appetite to riches, to power, and to sensual pleasures, how it masters the strongest reason, and is the root of disobedience, slaughter, fraud, hypocrisy, and all manner of evil habits; and that the laws of man, though they can punish the fruits of them, which are evil actions, yet they cannot pluck up the roots that are in the heart. How can a man be indicted of avarice, envy, hypocrisy, or other vicious habit, till it be declared by some action which a witness may take notice of? The root remaining, new fruit will come forth, till you be weary of punishing, and at last destroy all power that shall oppose it.

P. What hope then is there of a constant peace in any nation, or between one nation and another?

L. You are not to expect such a peace between

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two nations; because there is no common power in this world to punish their injustice. Mutual fear may keep them quiet for a time; but upon every visible advantage they will invade one another; and the most visible advantage is then, when the one nation is obedient to their king, and the other not. But peace at home may then be expected durable, when the common people shall be made to see the benefit they shall receive by their obedience and adhesion to their own sovereign, and the harm they must suffer by taking part with them, who by promises of reformation, or change of government, deceive them. And this is properly to be done by divines, and from arguments not only from reason, but also from the Holy Scripture.

P. This that you say is true, but not very much to that I aim at by your conversation, which is to inform myself concerning the laws of England. Therefore I ask you again, what is the end of statute-laws?

Of sovereign power.

L. I say then that the scope of all human law is peace, and justice in every nation amongst themselves, and defence against foreign enemies.

P. But what is justice?

L. Justice is giving to every man his own.

P. The definition is good, and yet it is Aristotle's. What is the definition agreed upon as a principle in the science of the common law?

L. The same with that of Aristotle.

P. See, you lawyers, how much you are beholden to the philosopher; and it is but reason; for the more general and noble science and law of all the world, is true philosophy, of which the common law of England is a very little part.

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L. It is so, if you mean by philosophy nothing but the study of reason; as I think you do.

P. When you say that justice gives to every man his own, what mean you by his own? How can that be given me, which is my own already? Or, if it be not my own, how can justice make it mine?

L. Without law, every thing is in such sort every man's, as he may take, possess, and enjoy, without wrong to any man; every thing, lands, beasts, fruits, and even the bodies of other men, if his reason tell him he cannot otherwise live securely. For the dictates of reason are little worth, if they tended not to the preservation and improvement of men's lives. Seeing then without human law all things would be common, and this community a cause of encroachment, envy, slaughter, and continual war of one upon another, the same law of reason dictates to mankind, for their own preservation, a distribution of lands and goods, that each man may know what is proper to him, so as none other might pretend a right thereunto, or disturb him in the use of the same. This distribution is justice, and this properly is the same which we say is one's own; by which you may see the great necessity there was of statute laws, for preservation of all mankind. It is also a dictate of the law of reason, that statute laws are a necessary means of the safety and well-being of man in the present world, and are to be obeyed by all subjects, as the law of reason ought to be obeyed, both by King and subjects, because it is the law of God.

P. All this is very rational; but how can any laws secure one man from another, when the greatest part of men are so unreasonable, and so

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partial to themselves as they are, and the laws of themselves are but a dead letter, which of itself is not able to compel a man to do otherwise than himself pleaseth, nor punish or hurt him when he hath done a mischief?

L. By the laws, I mean laws living and armed. For you must suppose, that a nation that is subdued by war to an absolute submission to a conqueror, may, by the same arm that compelled it to submission, be compelled to obey his laws. Also, if a nation choose a man, or an assembly of men, to govern them by laws, it must furnish him also with armed men and money, and all things necessary to his office; or else his laws will be of no force, and the nation remains, as before it was, in confusion. It is not therefore the word of the law, but the power of a man that has the strength of a nation, that make the laws effectual. It was not Solon that made Athenian laws, though he devised them, but the supreme court of the people; nor, the lawyers of Rome that made the imperial law in Justinian's time, but Justinian himself.

P. We agree then in this, that in England it is the King that makes the laws, whosoever pens them; and in this, that the King cannot make his laws effectual, nor defend his people against their enemies, without a power to levy soldiers; and consequently, that he may lawfully, as oft as he shall really think it necessary to raise an army, (which in some occasions be very great) I say, raise it, and money to maintain it. I doubt not but you will allow this to be according to the law, at least of reason.

L. For my part I allow it. But you have heard

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how, in and before the late troubles the people were of another mind. Shall the King, said they, take from us what he pleases, upon pretence of a necessity whereof he makes himself the judge? What worse condition can we be in from an enemy? What can they take from us more than what they list?

P. The people reason ill. They do not know in what condition we were, in the time of the Conqueror, when it was a shame to be an Englishman; who, if he grumbled at the base offices he was put to by his Norman masters, received no other answer than this, *thou art but an Englishman.* Nor can the people, nor any man that humours their disobedience, produce any example of a King that ever raised any excessive sums, either by himself or by the consent of his Parliament, but when they had great need thereof; nor can show any reason that might move any of them so to do. The greatest complaint by them made against the unthriftiness of their Kings, was for the enriching now and then a favourite, which to the wealth of the kingdom was inconsiderable, and the complaint but envy. But in this point of raising soldiers, what is, I pray you, the statute law?

L. The last statute concerning it, is 13 *Car.* II. cap. 6, by which the supreme government, command, and disposing of the militia of England, is delivered to be, and always to have been, the ancient right of the Kings of England. But there is also in the same act a proviso, that this shall not be construed for a declaration, that the King may transport his subjects, or compel them to march out of the kingdom; nor is it, on the contrary, declared to be unlawful.

Of sovereign power.

P. Why is not that also determined?

L. I can imagine cause enough for it, though I may be deceived. We love to have our King amongst us, and not to be governed by deputies, either of our own or another nation. But this I verily believe, that if a foreign enemy should either invade us, or put himself into a readiness to invade either England, Ireland, or Scotland, no Parliament then sitting, and the King send English soldiers thither, the Parliament would give him thanks for it. The subjects of those Kings who affect the glory, and imitate the actions, of Alexander the Great, have not always the most comfortable lives, nor do such Kings usually very long enjoy their conquests. They march to and fro perpetually, as upon a plank sustained only in the midst; and when one end rises, down goes the other.

P. It is well. But where soldiers, in the judgment of the King's conscience, are indeed necessary, as in an insurrection, or rebellion at home; how shall the kingdom be preserved without a considerable army ready and in pay? How shall money be raised for this army, especially when the want of public treasure inviteth neighbour Kings to encroach, and unruly subjects to rebel?

L. I cannot tell. It is matter of polity, not of law. But I know, that there be statutes express, whereby the King hath obliged himself never to levy money upon his subjects without the consent of his Parliament. One of which statutes is 25 *Edw.* I. c. 6, in these words: *We have granted for us, and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty*

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of the land, that for no business from henceforth, we shall take such aids, tasks, or prizes, but by the common consent of the realm. There is also another statute of *Edward* I. (34 *Edw.* I. stat. 4) in these words: *No tallage, or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land;* which statutes have been since that time confirmed by divers other Kings, and lastly by the King that now reigneth.

P. All this I know, and am not satisfied. I am one of the common people, and one of that almost infinite number of men, for whose welfare Kings and other sovereigns were by God ordained: for God made Kings for the people, and not people for Kings. How shall I be defended from the domineering of proud and insolent strangers that speak another language, that scorn us, that seek to make us slaves, or how shall I avoid the destruction that may arise from the cruelty of factions in a civil war, unless the King, to whom alone, you say, belongeth the right of levying and disposing of the militia by which only it can be prevented, have ready money, upon all occasions, to arm and pay as many soldiers, as for the present defence, or the peace of the people, shall be necessary? Shall not I, and you, and every man be undone? Tell me not of a Parliament, when there is no Parliament sitting, or perhaps none in being, which may often happen. And when there is a Parliament, if the speaking and leading men should have a design to put down monarchy, as they had in the Parliament which began to sit the third of November, 1640,

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shall the King, who is to answer to God Almighty for the safety of the people, and to that end is intrusted with the power to levy and dispose of the soldiery, be disabled to perform his office, by virtue of these acts of Parliament which you have cited? If this be reason, it is reason also that the people be abandoned, or left at liberty to kill one another, even to the last man; if it be not reason, then you have granted it is not law.

L. It is true, if you mean *recta ratio;* but *recta ratio*, which I grant to be law, as Sir Edward Coke says, (1 *Inst.* sect. 138), is an artificial perfection of reason, gotten by long study, observation, and experience, and not every man's natural reason; for *nemo nascitur artifex.* This legal reason is *summa ratio;* and therefore, if all the reason that is dispersed into so many several heads, were united into one, yet could he not make such a law as the law of England is, because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men. And this is it, he calls the common law.

P. Do you think this to be good doctrine? Though it be true, that no man is born with the use of reason, yet all men may grow up to it as well as lawyers; and when they have applied their reason to the laws, (which were laws before they studied them, or else it was not law they studied), may be as fit for and capable of judicature, as Sir Edward Coke himself, who whether he had more or less use of reason, was not thereby a judge, but because the King made him so. And whereas he says, that a man who should have as much reason as is dispersed in so many several heads, could not

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make such a law as this law of England is; if one should ask him who made the law of England, would he say a succession of English lawyers or judges made it, or rather a succession of kings? And that upon their own reason, either solely, or with the advice of the Lords and Commons in Parliament, without the judges or other professors of the law? You see therefore that the King's reason, be it more or less, is that *anima legis*, that *summa lex*, whereof Sir Edward Coke speaketh, and not the reason, learning, or wisdom of the judges. But you may see, that quite through his *Institutes of Law*, he often takes occasion to magnify the learning of the lawyers, whom he perpetually termeth the sages of the Parliament, or of the King's council. Therefore unless you say otherwise, I say, that the King's reason, when it is publicly upon advice and deliberation declared, is that *anima legis;* and that *summa ratio* and that equity, which all agree to be the law of reason, is all that is or ever was law in England, since it became Christian, besides the Bible.

L. Are not the Canons of the Church part of the law of England, as also the imperial law used in the Admiralty, and the customs of particular places, and the by-laws of corporations and courts of judicature?

P. Why not? For they were all constituted by the Kings of England; and though the civil law used in the Admiralty were at first the statutes of the Roman empire, yet because they are in force by no other authority than that of the King, they are now the King's laws, and the King's statutes. The same we may say of the Canons; such of them

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as we have retained, made by the Church of Rome, have been no law, nor of any force in England, since the beginning of Queen Elizabeth's reign, but by virtue of the great seal of England.

L. In the said statutes that restrain the levying of money without consent of Parliament, is there any thing you can take exceptions to?

P. No. I am satisfied that the kings that grant such liberties, are bound to make them good, so far as it may be done without sin: but if a King find that by such a grant he be disabled to protect his subjects, if he maintain his grant, he sins; and therefore may, and ought to take no notice of the said grant. For such grants, as by error or false suggestion are gotten from him, are, as the lawyers do confess, void and of no effect, and ought to be recalled. Also the King, as is on all hands confessed, hath the charge lying upon him to protect his people against foreign enemies, and to keep the peace betwixt them within the kingdom: if he do not his utmost endeavour to discharge himself thereof, he committeth a sin, which neither King nor Parliament can lawfully commit.

L. No man, I think, will deny this. For if levying of money be necessary, it is a sin in the Parliament to refuse; if unnecessary, it is a sin both in King and Parliament to levy. But for all that, it may be, and I think it is, a sin in any one that hath the sovereign power, be he one man or one assembly, being intrusted with the safety of a whole nation, if rashly, and relying upon his own natural sufficiency, he make war or peace, without consulting with such, as by their experience and employment abroad, and intelligence by letters, or other means,

have gotten the knowledge in some measure of the strength, advantages, and designs of the enemy, and the manner and the degree of the danger that may from thence arise. In like manner, in case of rebellion at home, if he consult not with those of military condition; which if he do, then I think he may lawfully proceed to subdue all such enemies and rebels; and that the soldiers ought to go on without inquiring whether they be within the country, or without. For who shall suppress rebellion, but he that hath right to levy, command, and dispose of the militia? The last Long Parliament denied this. But why? Because by the major part of their votes the rebellion was raised with the design to put down monarchy, and to that end maintained.

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P. Nor do I hereby lay any aspersion upon such grants of the King and his ancestors. Those statutes are in themselves very good for the King and the people, as creating some kind of difficulty for such Kings as, for the glory of conquest, might spend one part of their subjects' lives and estates in molesting other nations, and leave the rest to destroy themselves at home by factions. That which I here find fault with, is the wresting of those, and other such statutes, to the binding of our Kings from the use of their armies in the necessary defence of themselves and their people. The late Long Parliament, that in 1648 murdered their King, (a King that sought no greater glory upon earth, but to be indulgent to his people, and a pious defender of the Church of England,) no sooner took upon them the sovereign power, than they levied money upon the people at their own discretion. Did any of their sub-

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jects dispute their power? Did they not send soldiers over the sea to subdue Ireland, and others to fight against the Dutch at sea; or made they any doubt but to be obeyed in all that they commanded, as a right absolutely due to the sovereign power in whomsoever it resides? I say not this as allowing their actions, but as a testimony from the mouths of those very men that denied the same power to him whom they acknowledged to have been their sovereign immediately before; which is a sufficient proof, that the people of England never doubted of the King's right to levy money for the maintenance of his armies, till they were abused in it by seditious teachers, and other prating men, on purpose to turn the State and Church into popular government, where the most ignorant and boldest talkers do commonly obtain the best preferments. Again, when their new republic returned into monarchy by Oliver, who durst deny him money upon any pretence of *Magna Charta*, or of these other acts of Parliament which you have cited? You may therefore think it good law, for all your books, that the King of England may at all times, that he thinks in his conscience it will be necessary for the defence of his people, levy as many soldiers and as much money as he please, and that himself is judge of the necessity.

L. Is there nobody hearkening at the door?

P. What are you afraid of?

L. I mean to say the same that you say: but there be very many yet, that hold their former principles, whom neither the calamities of the civil wars, nor their former pardon, have thoroughly cured of their madness.

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P. The common people never take notice of what they hear of this nature, but when they are set on by such as they think wise; that is, by some sorts of preachers, or some that seem to be learned in the laws, and withal speak evil of the governors. But what if the King, upon the sight or apprehension of any great danger to his people, (as when their neighbours are borne down by the current of a conquering enemy), should think his own people might be involved in the same misery; may he not levy, pay, and transport soldiers to help those weak neighbours, by way of prevention to save his own people and himself from servitude? Is that a sin?

L. First, if the war upon our neighbour be just, it may be questioned whether it be equity or no to assist them against the right.

P. For my part, I make no question of that at all, unless the invader will, and can, put me in security, that neither he nor his successors shall make any advantage of the conquest of my neighbour, to do the same to me in time to come. But there is no common power to bind them to the peace.

L. Secondly, when such a thing shall happen, the Parliament will not refuse to contribute freely to the safety of themselves and the whole nation.

P. It may be so, and it may be not; for if a Parliament then sit not, it must be called; that requires six weeks' time; debating and collecting what is given requires as much, and in this time the opportunity perhaps is lost. Besides, how many wretched souls have we heard to say in the

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late troubles; what matter is it who gets the victory? We can pay but what they please to demand, and so much we pay now. And this they will murmur, as they have ever done, whosoever shall reign over them, as long as their covetousness and ignorance hold together; which will be till doomsday, if better order be not taken for their instruction in their duty, both from reason and religion.

L. For all this I find it somewhat hard, that a King should have right to take from his subjects, upon the pretence of necessity, what he pleaseth.

P. I know what it is that troubles your conscience in this point. All men are troubled at the crossing of their wishes; but it is our own fault. First, we wish impossibilities; we would have our security against all the world upon right of property, without paying for it; this is impossible. We may as well expect that fish and fowl should boil, roast, and dish themselves, and come to the table, and that grapes should squeeze themselves into our mouths, and have all other the contentments and ease which some pleasant men have related of the land of Cocagne. Secondly, there is no nation in the world where he or they that have the sovereignty, do not take what money they please for the defence of those respective nations, when they think it necessary for their safety. The late Long Parliament denied this; but why? Because there was a design amongst them to depose the King. Thirdly, there is no example of any King of England that I have read of, that ever pretended any such necessity for levying money against his conscience. The greatest sums that ever were levied, comparing the value of money, as it was at that

time, with what it is now, were levied by King Edward III and King Henry V; kings in whom we glory now, and think their actions great ornaments to the English history. Lastly, as to the enriching now and then a favourite, it is neither sensible to the kingdom, nor is any treasure thereby conveyed out of the realm, but so spent as it falls down again upon the common people. To think that our condition being human should be subject to no incommodity, were injuriously to quarrel with God Almighty for our own faults. Of sovereign power.

L. I know not what to say.

P. If you allow this that I have said, then say, that the people never were, shall be, or ought to be, free from being taxed at the will of one or other; that if civil war come, they must levy all they have, and that dearly, from the one or from the other, or from both sides. Say, that adhering to the King, their victory is an end of their trouble; that adhering to his enemies there is no end; for the war will continue by a perpetual subdivision, and when it ends, they will be in the same estate they were before. That they are often abused by men who to them seem wise, when then their wisdom is nothing else but envy of those that are in grace and in profitable employments; and that those men do but abuse the common people to their own ends, that set up a private man's propriety against the public safety. But say withal, that the King is subject to the laws of God, both written and unwritten, and to no other; and so was William the Conqueror, whose right is all descended to our present King.

L. As to the law of reason, which is equity, it

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is sure enough there is but one legislator, which is God.

P. It followeth, then, that which you call the common law, distinct from statute law, is nothing else but the law of God.

L. In some sense it is; but it is not Gospel, but natural reason, and natural equity.

P. Would you have every man to every other man allege for law his own particular reason? There is not amongst men a universal reason agreed upon in any nation, besides the reason of him that hath the sovereign power. Yet though his reason be but the reason of one man, yet it is set up to supply the place of that universal reason, which is expounded to us by our Saviour in the Gospel; and consequently our King is to us the legislator both of statute-law, and of common-law.

L. Yes, I know that the laws spiritual, which have been law in this kingdom since the abolishing of popery, are the King's laws, and those also that were made before. For the Canons of the Church of Rome were no laws, neither here, nor anywhere else without the Pope's temporal dominions, farther than kings and states in their several dominions respectively did make them so.

P. I grant that. But you must grant also, that those spiritual laws were made by the legislators of the spiritual law And yet not all kings and states make laws by consent of the Lords and Commons; but our King here is so far bound to their assents, as he shall judge conducing to the good and safety of his people. For example, if the Lords and Commons should advise him to restore those laws spiritual, which in Queen Mary's time were in force, I think

the King were by the law of reason obliged, without the help of any other law of God, to neglect such advice.

L. I grant you that the King is sole legislator; but with this restriction, that if he will not consult with the Lords of Parliament, and hear the complaints and informations of the Commons, that are best acquainted with their own wants, he sinneth against God, though he cannot be compelled to any thing by his subjects by arms and force.

P. We are agreed upon that already. Since therefore the King is sole legislator, I think it also reason he should be sole supreme judge.

L. There is no doubt of that; for otherwise there would be no congruity of judgments with the laws. I grant also that he is the supreme judge over all persons, and in all causes civil and ecclesiastical within his own dominions; not only by act of Parliament at this time, but that he has ever been so by the common law. For the judges of both the Benches have their offices by the King's letters-patent; and so as to judicature have the bishops. Also the Lord Chancellor hath his office by receiving from the King the Great Seal of England. And, to say all at once, there is no magistrate, or commissioner for public business, neither of judicature nor execution, in State or Church, in peace or war, but he is made so by authority from the King.

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P. It is true; but perhaps you may think otherwise, when you read such acts of parliament, as say, that the King shall have power and authority to do this or that by virtue of that act, as *Elizabeth* c. I. "that your highness, your heirs, and

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successors, Kings, or Queens of this realm, shall have full power and authority, by virtue of this act, by letters-patent under the great seal of England, to assign, &c." Was it not this Parliament that gave this authority to the Queen?

L. No. For the statute in this clause is no more than, as Sir Edward Coke useth to speak, an affirmance of the common-law. For she being head of the Church of England, might make commissioners for the deciding of matters ecclesiastical, as freely as if she had been Pope, who did, you know, pretend his right from the law of God.

P. We have hitherto spoken of laws without considering anything of the nature and essence of a law; and now unless we define the word *law*, we can go no farther without ambiguity and fallacy, which will be but loss of time; whereas, on the contrary, the agreement upon our words will enlighten all we have to say hereafter.

L. I do not remember the definition of *law* in any statute.

P. I think so: for the statutes were made by authority, and not drawn from any other principles than the care of the safety of the people. Statutes are not philosophy, as is the common-law, and other disputable arts, but are commands or prohibitions, which ought to be obeyed, because assented to by submission made to the Conqueror here in England, and to whosoever had the sovereign power in other commonwealths; so that the positive laws of all places are statutes. The definition of law was therefore unnecessary for the makers of statutes, though very necessary to them whose work it is to teach the sense of the law.

L. There is an accurate definition of a law in Bracton, cited by Sir Edward Coke: *Lex est sanctio justa, jubens honesta, et prohibens contraria.* The King is the supreme judge.

P. That is to say, law is a just statute, commanding those things which are honest, and forbidding the contrary. From whence it followeth, that in all cases it must be the honesty or dishonesty that makes the command a law; whereas you know that but for the law we could not, as saith St. Paul, have known what is sin. Therefore this definition is no ground at all for any farther discourse of law. Besides, you know the rule of honest and dishonest refers to honour, and that it is justice only, and injustice, that the law respecteth. But that which I most except against in this definition, is, that it supposes that a statute made by the sovereign power of a nation may be unjust. There may indeed in a statute-law, made by men, be found iniquity, but not injustice.

L. This is somewhat subtile. I pray deal plainly. What is the difference between injustice and iniquity?

P. I pray you tell me first, what is the difference between a court of justice, and a court of equity?

L. A court of justice is that which hath cognizance of such causes as are to be ended by the positive laws of the land; and a court of equity is that, to which belong such causes as are to be determined by equity; that is to say, by the law of reason.

P. You see then that the difference between

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injustice and iniquity is this; that injustice is the transgression of a statute-law, and iniquity the transgression of the law of reason. But perhaps you mean by common-law, not the law itself, but the manner of proceeding in the law, as to matter of fact, by twelve men, freeholders; though those twelve men are no court of equity, nor of justice, because they determine not what is just or unjust, but only whether it be done or not done; and their judgment is nothing else but a confirmation of that which is properly the judgment of the witnesses. For to speak exactly, there cannot possibly be any judge of fact besides the witnesses.

L. How would you have a law defined?

P. Thus; a law is the command of him or them that have the sovereign power, given to those that be his or their subjects, declaring publicly and plainly what every of them may do, and what they must forbear to do.

L. Seeing all judges in all courts ought to judge according to equity, which is the law of reason, a distinct court of equity seemeth to me to be unnecessary, and but a burthen to the people, since common-law and equity are the same law.

P. It were so indeed, if judges could not err; but since they may err, and that the King is not bound to any other law but that of equity, it belongs to him alone to give remedy to them that, by the ignorance or corruption of a judge, shall suffer damage.

L. By your definition of a law, the King's proclamation under the Great Seal of England is a

law; for it is a command, and public, and of the sovereign to his subjects. The King is the supreme judge.

P. Why not, if he think it necessary for the good of his subjects? For this is a maxim at the common-law alleged by Sir Edward Coke himself, (1 Inst. sect. 306), *Quando lex aliquid concedit, concedere videtur et id per quod devenitur ad illud.* And you know out of the same author, that divers Kings of England have often, to the petitions in Parliament which they granted, annexed such exceptions as these, *unless there be necessity, saving our regality*; which I think should be always understood, though they be not expressed; and are understood so by common lawyers, who agree that the King may recall any grant wherein he was deceived.

L. Again, whereas you make it of the essence of a law to be publicly and plainly declared to the people, I see no necessity for that. Are not all subjects bound to take notice of all acts of Parliament, when no act can pass without their consent?

P. If you had said that no act could pass without their knowledge, then indeed they had been bound to take notice of them; but none can have knowledge of them but the members of the houses of Parliament; therefore the rest of the people are excused. Or else the knights of the shire should be bound to furnish people with a sufficient number of copies, at the people's charge, of the acts of Parliament, at their return into the country; that every man may resort to them, and by themselves, or friends, take notice of what they are obliged to. For otherwise it were impossible they should be

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obeyed: and that no man is bound to do a thing impossible, is one of Sir Edward Coke's maxims at the common-law. I know that most of the statutes are printed; but it does not appear that every man is bound to buy the book of statutes, nor to search for them at Westminster or at the Tower, nor to understand the language wherein they are for the most part written.

L. I grant it proceeds from their own faults; but no man can be excused by ignorance of the law of reason, that is to say, by ignorance of the common-law, except children, madmen, and idiots. But you exact such a notice of the statute-law, as is almost impossible. Is it not enough that they in all places have a sufficient number of the penal statutes?

P. Yes; if they have those penal statutes near them. But what reason can you give me why there should not be as many copies abroad of the statutes, as there be of the Bible?

L. I think it were well that every man that can read, had a statute-book; for certainly no knowledge of those laws, by which men's lives and fortunes can be brought into danger, can be too much. I find a great fault in your definition of law; which is, that every law either forbiddeth or commandeth something. It is true that the moral law is always a command or a prohibition, or at least implieth it. But in the Levitical law, where it is said that he that stealeth a sheep shall restore fourfold, what command or prohibition lieth in these words?

P. Such sentences as that are not in themselves general, but judgments; nevertheless, there is in

those words implied a commandment to the judge, to cause to be made a fourfold restitution. The King is the supreme judge.

L. That is right.

P. Now define what justice is, and what actions and men are to be called just.

L. Justice is the constant will of giving to every man his own; that is to say, of giving to every man that which is his right, in such manner as to exclude the right of all men else to the same thing. A just action is that which is not against the law. A just man is he that hath a constant will to live justly; if you require more, I doubt there will no man living be comprehended within the definition.

P. Seeing then that a just action, according to your definition, is that which is not against the law; it is manifest that before there was a law, there could be no injustice; and therefore laws are in their nature antecedent to justice and injustice. And you cannot deny but there must be law-makers, before there were any laws, and consequently before there was any justice, (I speak of human justice); and that law-makers were before that which you call *own*, or property of goods or lands, distinguished by *meum*, *tuum*, *alienum*.

L. That must be granted; for without statute-laws, all men have right to all things; and we have had experience, when our laws were silenced by civil war, there was not a man, that of any goods could say assuredly they were his own.

P. You see then that no private man can claim a propriety in any lands, or other goods, from any title from any man but the King, or them that have the sovereign power; because it is in virtue of the sovereignty, that every man may not enter

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into and possess what he pleaseth; and consequently to deny the sovereign anything necessary to the sustaining of his sovereign power, is to destroy the propriety he pretends to. The next thing I will ask you is, how you distinguish between law and right, or *lex* and *jus*.

L. Sir Edward Coke in divers places makes *lex* and *jus* to be the same, and so *lex communis* and *jus communis*, to be all one; nor do I find that he does in any place distinguish them.

P. Then will I distinguish them, and make you judge whether my distinction be not necessary to be known by every author of the common-law. For law obligeth me to do, or forbear the doing of something; and therefore it lays upon me an obligation. But my right is a liberty left me by the law to do any thing which the law forbids me not, and to leave undone any thing which the law commands me not. Did Sir Edward Coke see no difference between being bound and being free?

L. I know not what he saw, but he has not mentioned it. Though a man may dispense with his own liberty, he cannot do so with the law.

P. But what are you better for your right, if a rebellious company at home, or an enemy from abroad, take away the goods, or dispossess you of the lands you have a right to? Can you be defended or repaired, but by the strength and authority of the King? What reason therefore can be given by a man that endeavours to preserve his propriety, why he should deny or malignly contribute to the strength that should defend him or repair him? Let us see now what your books say to this point, and other points of the right of

sovereignty. Bracton, the most authentic author of the common law, (fol. 55), saith thus: *Ipse Dominus Rex habet omnia jura in manu sua, sicut Dei vicarius; habet etiam ea quæ sunt pacis; habet etiam coercionem, ut delinquentes puniat; item habet in potestate sua leges. Nihil enim prodest jura condere, nisi sit qui jura tueatur.* That is to say: Our Lord the King hath all right in his own hands; is God's vicar; he has all that concerns the peace; he has the power to punish delinquents; all the laws are in his power: to make laws is to no purpose, unless there be somebody to make them obeyed. If Bracton's law be reason, as I and you think it is, what temporal power is there which the King hath not? Seeing that at this day all the power spiritual, which Bracton allows the Pope, is restored to the crown; what is there that the King cannot do, excepting sin against the law of God? The same Bracton, (*lib.* ii. *c.* 8, fol. 5), saith thus: *Si autem a Rege petatur, cum breve non currat contra ipsum, locus erit supplicationi quod factum suum corrigat et emendet; quod quidem si non fecerit, satis sufficit ei ad pœnam, quod Dominum expectet ultorem: nemo quidem de factis suis præsumat disputare, multo fortius contra factum suum venire.* That is to say: If any thing be demanded of the King, seeing a writ lieth not against him, he is put to his petition, praying him to correct and amend his own fact; which if he will not do, it is a sufficient penalty for him, that he is to expect a punishment from the Lord: no man may presume to dispute of what he does, much less to resist him. You see by this, that this doctrine concerning the rights of sovereignty, so much cried

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down by the Long Parliament, is the ancient common-law, and that the only bridle of the Kings of England, ought to be the fear of God. And again, Bracton, (*lib.* ii. *c.* 24, fol. 55), says, that the rights of the Crown cannot be granted away: *Ea vero quæ jurisdictionis sunt et pacis, et ea quæ sunt justitiæ et paci annexa, ad nullum pertinent nisi ad coronam et dignitatem Regiam, nec a corona separari poterunt, nec a privata persona possideri.* This is to say: those things which belong to jurisdiction and peace, and those things that are annexed to justice and peace, appertain to none but to the crown and dignity of the King, nor can be separated from the crown, nor be possessed by a private person. Again, you will find in Fleta, a law-book written in the time of Edward II, that liberties, though granted by the King, if they tend to the hinderance of justice, or subversion of the regal power, were not to be used, nor allowed; for in that book, (*lib.* i. c. 20, § 54) concerning articles of the crown, which the justices itinerant are to enquire of, the 54th article is this: You shall inquire, *de libertatibus concessis quæ impediunt communem justitiam, et Regiam potestatem subvertunt.* Now what is a greater hinderance to common justice, or a greater subversion of the regal power, than a liberty in subjects to hinder the King from raising money necessary to suppress or prevent rebellions, which doth destroy justice, and subvert the power of the sovereignty? Moreover, when a charter is granted by the King in these words: "*Dedita etc.... coram etc.... pro me et hæredibus meis:*" the grantor by the common-law, as Sir Edward Coke says in his Commentaries on Lit-

tleton, is to warrant his gift; and I think it reason, especially if the gift be upon consideration of a price paid. Suppose a foreign state should lay claim to this kingdom, (it is no matter as to the question I am putting, whether the claim be unjust), how would you have the King to warrant to every freeholder in England the lands they hold of him by such a charter? If he cannot levy money, their estates are lost, and so is the King's estate; and if the King's estate be gone, how can he repair the value due upon the warranty? I know that the King's charters are not so merely grants, as that they are not also laws; but they are such laws as speak not to all the King's subjects in general, but only to his officers; implicitly forbidding them to judge or execute any thing contrary to the said grants. There be many men that are able judges of what is right reason, and what not; when any of these shall know that a man has no superior nor peer in the kingdom, he will hardly be persuaded he can be bound by any law of the kingdom, or that he who is subject to none but God, can make a law upon himself, which he cannot also as easily abrogate as he made it. The main argument, and that which so much taketh with the throng of people, proceedeth from a needless fear put into their minds by such men as mean to make use of their hands to their own ends. For if, say they, the King may notwithstanding the law do what he please, and nothing to restrain him but the fear of punishment in the world to come, then, in case there come a king that fears no such punishment, he may take away from us, not only our lands, goods, and liberties, but our lives also if he

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will. And they say true; but they have no reason to think he will, unless it be for his own profit; which cannot be, for he loves his own power; and what becomes of his power when his subjects are destroyed or weakened, by whose multitude and strength he enjoys his power, and every one of his subjects his fortune? And lastly, whereas they sometimes say the King is bound, not only to cause his laws to be observed, but also to observe them himself; I think the King causing them to be observed is the same thing as observing them himself. For I never heard it taken for good law, that the King may be indicted, or appealed, or served with a writ, till the Long Parliament practised the contrary upon the good King Charles; for which divers of them were executed, and the rest by this our present King pardoned.

L. Pardoned by the King and Parliament.

P. By the King in Parliament if you will, but not by the King and Parliament. You cannot deny, but that the pardoning of injury belongs to the person that is injured; treason, and other offences against the peace and against the right of the sovereign, are injuries done to the King; and therefore whosoever is pardoned any such offence, ought to acknowledge he owes his pardon to the King alone: but as to such murders, felonies, and other injuries as are done to any subject how mean soever, I think it great reason that the parties endamaged ought to have satisfaction before such pardon be allowed. And in the death of a man, where restitution of life is impossible, what can any friend, heir, or other party that may appeal, require more than reasonable satisfaction some other way? Per-

haps he will be content with nothing but life for life; but that is revenge, and belongs to God, and under God to the King, and none else; therefore if there be reasonable satisfaction tendered, the King without sin, I think, may pardon him. I am sure, if the pardoning him be a sin, that neither King, nor Parliament, nor any earthly power can do it. The King is the supreme judge.

L. You see by this your own argument, that the Act of *Oblivion*, without a Parliament, could not have passed; because, not only the King, but also most of the Lords, and abundance of common people had received injuries; which not being pardonable but by their own assent, it was absolutely necessary that it should be done in Parliament, and by the assent of the Lords and Commons.

P. I grant it; but I pray you tell me now what is the difference between a general pardon, and an act of *oblivion?*

L. The word Act of *Oblivion* was never in our books before; but I believe it is in yours.

P. In the state of Athens long ago, for the abolishing of the civil war, there was an act agreed on; that from that time forward, no man should be molested for anything before that act done, whatsoever, without exception; which act the makers of it called an act of *oblivion;* not that all injuries should be forgotten (for then we could never have had the story), but that they should not rise up in judgment against any man. And in imitation of this act, the like was propounded, though it took no effect, upon the death of Julius Cæsar, in the senate of Rome. By such an act you may easily conceive that all accusations for offences past were

absolutely dead and buried; and yet we have no great reason to think, that the objecting one to another of the injuries pardoned, was any violation of those acts, except the same were so expressed in the act itself.

L. It seems then that the act of *oblivion* was here no more, nor of other nature, than a general pardon.

Of Courts. *P.* Since you acknowledge that in all controversies, the judicature originally belongeth to the King, and seeing that no man is able in his own person to execute an office of so much business: what order is taken for deciding of so many and so various controversies?

L. There be divers sorts of controversies, some of which are concerning men's titles to lands and goods; and some goods are corporeal, as lands, money, cattle, corn, and the like, which may be handled or seen; and some incorporeal, as privileges, liberties, dignities, offices, and many other good things, mere creatures of the law, and cannot be handled or seen; and both of these kinds are concerning *meum* and *tuum*. Others there are concerning crimes punishable divers ways: and amongst some of these, part of the punishment is some fine or forfeiture to the King; and then it is called a plea of the Crown, in case the King sue the party; otherwise it is but a private plea, which they call an appeal. And though upon judgment in an appeal the King shall have his forfeiture, yet it cannot be called a plea of the Crown, but when the Crown pleadeth for it. There be also other controversies concerning the government of the Church, in order to religion and virtuous life. The offences

both against the Crown and against the laws of the Church, are crimes: but the offences of one subject against another, if they be not against the Crown, the King pretendeth nothing in those pleas but the reparation of his subjects injured.

P. A crime is an offence of any kind whatsoever, for which a penalty is ordained by the law of the land: but you must understand that damages awarded to the party injured, has nothing common with the nature of a penalty, but is merely a restitution or satisfaction, due to the party grieved by the law of reason, and consequently is no more a punishment than is the paying of a debt.

L. It seems by this definition of a crime, you make no difference between a crime and a sin.

P. All crimes are indeed sins, but not all sins crimes. A sin may be in the thought or secret purpose of a man, of which neither a judge, nor a witness, nor any man can take notice; but a crime is such a sin as consists in an action against the law, of which action he can be accused, and tried by a judge, and be convinced or cleared by witnesses. Farther; that which is no sin in itself, but indifferent, may be made sin by a positive law: as when the statute was in force that no man should wear silk in his hat, after the statute such wearing of silk was a sin, which was not so before. Nay, sometimes an action that is good in itself, by the statute law may be made a sin; as if a statute should be made to forbid the giving of alms to a strong and sturdy beggar, such alms, after that law, would be a sin, but not before; for then it was charity, the object whereof is not the strength or other quality of the poor man, but his poverty. Again,

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he that should have said in Queen Mary's time, that the Pope had no authority in England, should have been burnt at a stake; but for saying the same in the time of Queen Elizabeth, should have been commended. You see by this, that many things are made crimes, and no crime, which are not so in their own nature, but by diversity of law, made upon diversity of opinion or of interest by them which have authority: and yet those things, whether good or evil, will pass so with the vulgar, if they hear them often with odious terms recited, for heinous crimes in themselves, as many of those opinions, which are in themselves pious and lawful, were heretofore, by the Pope's interest therein, called detestable heresy. Again, some controversies are of things done upon the sea, others of things done upon the land. There need be many courts to the deciding of so many kinds of controversies. What order is there taken for their distribution?

L. There be an extraordinary great number of courts in England. First, there be the King's courts, both for law and equity, in matters temporal; which are the Chancery, the King's Bench, the Court of Common Pleas; and, for the King's revenue, the Court of the Exchequer: and there be subjects' courts by privilege, as the Courts in London and other privileged places. And there be other courts of subjects, as the Court of Landlords, called the Court of Barons, and the Courts of Sheriffs. Also the Spiritual Courts are the King's courts at this day, though heretofore they were the Pope's courts. And in the King's courts, some have their judicature by office, and some by commission; and some authority to hear and determine, and some only to inquire,

and to certify into other courts. Now for the distribution of what pleas every court may hold, it is commonly held, that all the pleas of the Crown, and of all offences contrary to the peace, are to be holden in the King's Bench, or by commissioners. For Bracton saith: *Sciendum est, quod si actiones sunt criminales, in Curia Domini Regis debent determinari; cum sit ibi pœna corporalis infligenda, et hoc coram ipso rege, si tangat personam suam, sicut crimen læsæ majestatis, vel coram justitiariis ad hoc specialiter assignatis:* that is to say, that if the plea be criminal, it ought to be determined in the Court of our Lord the King, because there they have power to inflict corporal punishment; and if the crime be against his person, as the crime of treason, it ought to be determined before the King himself; or if it be against a private person, it ought to be determined by justices assigned, that is to say, before commissioners. It seems by this, that heretofore Kings did hear and determine pleas of treason against themselves, by their own persons; but it has been otherwise a long time, and is now; for it is now the office of the Lord Steward of England, in the trial of a peer, to hold that plea by a commission especially for the same. In causes concerning *meum* and *tuum*, the King may sue, either in the King's Bench, or in the Court of Common Pleas; as it appears by Fitzherbert in his *Natura Brevium*, at the writ of escheat. Of Courts.

P. A king perhaps will not sit to determine of causes of treason against his person, lest he should seem to make himself judge in his own cause; but that it shall be judged by judges of his own making can never be avoided, which is all one as if he were judge himself.

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L. To the King's Bench also, I think, belongeth the hearing and determining of all manner of breaches of the peace whatsoever, saving always to the King that he may do the same, when he pleaseth, by commissioners. In the time of Henry III and Edward I (when Bracton wrote) the King did usually send down every seven years into the country, commissioners called justices itinerant, to hear and determine generally all causes temporal, both criminal and civil; whose places have been now a long time supplied by the justices of assize, with commissions of the peace of *oyer* and *terminer*, and of gaol-delivery.

P. But why may the King only sue in the King's Bench or Court of Common Pleas, which he will, and no other person may do the same?

L. There is no statute to the contrary, but it seemeth to be the common-law. For Sir Edward Coke (IV*th Instit.*), setteth down the jurisdiction of the King's Bench; which, he says, has: first, jurisdiction in all pleas of the Crown. Secondly, the correcting of all manner of errors of other justices and judges, both of judgments and process, except of the Court of Exchequer, which, he says, is to this court *proprium quarto modo*. Thirdly, that it has power to correct all misdemeanours *extrajudicial*, tending to the breach of the peace, or oppression of the subjects, or raising of factions, controversies, debates, or any other manner of misgovernment. Fourthly, it may hold plea by writ out of the Chancery of all trespasses done *vi et armis*. Fifthly, it hath power to hold plea by bill for debt, detenue, covenant, promise, and all other personal actions. But of the jurisdiction of the King's Bench in ac-

tions real he says nothing; save, that if a writ in a real action be abated by judgment in the Court of Common Pleas, and that the judgment be by a writ of error reversed in the King's Bench, then the King's Bench may proceed upon the writ.

P. But how is the practice?

L. Real actions are commonly decided, as well in the King's Bench, as in the Court of Common Pleas

P. When the King by authority in writing maketh a Lord Chief Justice of the King's Bench; does he not set down what he makes him for?

L. Sir Edward Coke sets down the letters-patent, whereby of ancient time the Lord Chief Justice was constituted, wherein is expressed to what end he hath his office; *viz. pro conservatione nostra et tranquillitatis regni nostri, et ad justitiam universis et singulis de regno nostro exhibendam, constituimus dilectum et fidelem nostrum* P. B. *Justitiarium Angliæ, quamdiu nobis placuerit, Capitalem, etc.:* that is to say, for the preservation of ourself, and of the peace of our realm, and for the doing of justice to all and singular our subjects, we have constituted our beloved and faithful P. B. during our pleasure, Chief Justice of England, &c.

P. Methinks it is very plain by these letters-patent, that all causes temporal within the kingdom, except the pleas that belong to the Exchequer, should be decidable by this Lord Chief Justice. For as for causes criminal, and that concern the peace, it is granted him in these words, "for the conservation of our self, and peace of the kingdom," wherein are contained all pleas criminal; and, in the doing of justice to all and singular the King's

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subjects are comprehended all pleas civil. And as to the Court of Common Pleas, it is manifest it may hold all manner of civil pleas, except those of the Exchequer, by *Magna Charta*, cap. ii. So that all original writs concerning civil pleas are returnable into either of the said courts. But how is the Lord Chief Justice made now?

L. By these words in their letters-patent: *Constituimus vos Justitiarium nostrum Capitalem ad placita coram nobis tenenda, durante beneplacito nostro:* that is to say, we have made you our Chief Justice, to hold pleas before ourself, during our pleasure. But this writ, though it be shorter, does not at all abridge the power they had by the former. And for the letters-patent for the Chief Justice of the Common Pleas, they go thus: *Constituimus dilectum et fidelem, etc., Capitalem Justitiarium de Communi Banco, habendum, etc., quamdiu nobis placuerit, cum vadiis et fœdis ab antiquo debitis et consuetis. Id est,* We have constituted our beloved and faithful, &c., Chief Justice of the Common Bench, to have, &c., during our pleasure, with the ways and fees thereunto heretofore due, and usual.

P. I find in history, that there have been in England always a Chancellor and a Chief Justice of England, but of a Court of Common Pleas there is no mention before *Magna Charta*. Common pleas there were ever both here, and, I think, in all nations; for common pleas and civil pleas I take to be the same.

L. Before the statute of *Magna Charta*, common pleas, as Sir Edward Coke granteth, (2 *Inst.* p. 21), might have been holden in the King's

Bench; and that court being removeable at the King's will, the returns of writs were *Coram nobis ubicúnque fuerimus in Anglia;* whereby great trouble of jurors ensued, and great charges of the parties, and delay of justice; and for these causes it was ordained, that the common pleas should not follow the King, but be held in a place certain. Of Courts.

P. Here Sir Edward Coke declares his opinion, that no common plea can be holden in the King's Bench, in that he says they might have been holden then. And yet this doth not amount to any probable proof, that there was any Court of Common Pleas in England before *Magna Charta.* For this statute being to ease the jurors, and lessen the charges of parties, and for the expedition of justice, had been in vain, if there had been a Court of Common Pleas then standing; for such a court was not necessarily to follow the King, as was the Chancery and the King's Bench. Besides, unless the King's Bench, wheresoever it was, held plea of civil causes, the subject had not at all been eased by this statute. For supposing the King at York, had not the King's subjects about London, jurors and parties, as much trouble and charge to go to York, as the people about York had before to go to London? Therefore I can by no means believe otherwise, than that the erection of the Court of Common Pleas was the effect of that statute of *Magna Charta*, cap. 11; and before that time not existent, though I think that for the multiplicity of suits in a great kingdom there was need of it.

L. Perhaps there was not so much need of it as you think. For in those times the laws, for the most part, were in settling, rather than settled;

Of Courts. and the old Saxon laws concerning inheritances were then practised, by which laws speedy justice was executed by the King's writs, in the courts of Barons, which were landlords to the rest of the freeholders; and suits of barons in County courts; and but few suits in the King's courts, but when justice could not be had in those inferior courts. But at this day there be more suits in the King's courts, than any one court can despatch.

P. Why should there be more suits now, than formerly? For I believe this kingdom was as well peopled then as now.

L. Sir Edward Coke (4 *Inst.* p. 76) assigneth for it six causes: 1. Peace. 2. Plenty. 3. The dissolution of religious houses, and dispersing of their lands among so many several persons. 4. The multitude of informers. 5. The number of concealers. 6. The multitude of attorneys.

P. I see Sir Edward Coke has no mind to lay any fault upon the men of his own profession, and that he assigns for causes of the mischiefs, such things as would be mischief and wickedness to amend. For if peace and plenty be the cause of this evil, it cannot be removed but by war and beggary; and the quarrels arising about the lands of religious persons cannot arise from the lands, but from the doubtfulness of the laws. And for informers, they were authorized by statutes; to the execution of which statutes they are so necessary, as that their number cannot be too great; and if it be too great, the fault is in the law itself. The number of concealers are indeed a number of cozeners, which the law may easily correct. And lastly, for the multitude of attorneys, it is the

fault of them that have the power to admit or refuse them. For my part, I believe that men at this day have better learned the art of cavilling against the words of a statute, than heretofore they had, and thereby encourage themselves and others to undertake suits upon little reason. Also the variety and repugnancy of judgments of common-law, do oftentimes put men to hope for victory in causes whereof in reason they had no ground at all: also the ignorance of what is equity in their own causes, which equity not one man in a thousand ever studied. And the lawyers themselves seek not for their judgments in their own breasts, but in the precedents of former judges: as the ancient judges sought the same, not in their own reason, but in the laws of the empire. Another, and perhaps the greatest cause of multitude of suits, is this, that for want of registering of conveyances of land, which might easily be done in the townships where the lands lay, a purchase cannot easily be had which will not be litigious. Lastly, I believe the covetousness of lawyers was not so great in ancient time, which was full of trouble, as they have been since in time of peace; wherein men have leisure to study fraud, and get employment from such men as can encourage to contention. And how ample a field they have to exercise this mystery in, is manifest from this, that they have a power to scan and construe every word in a statute, charter, feoffment, lease, or other deed, evidence, or testimony. But to return to the jurisdiction of this Court of the King's Bench, where, as you say, it hath power to correct and amend the errors of all other judges, both in process and

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in judgments; cannot the judges of the Common Pleas correct error in process in their own courts, without a writ of error from another court?

L. Yes; and there be many statutes which command them so to do.

P. When a writ of error is brought out of the King's Bench, be it either error in process or in law, at whose charge is it to be done?

L. At the charge of the client.

P. I see no reason for that; for the client is not in fault, who never begins a suit but by the advice of his counsel, learned in the law, whom he pays for his counsel given. Is not this the fault of his counsellor? Nor when a judge in the Common Pleas hath given an erroneous sentence, is it always likely that the judge of the King's Bench will reverse the judgment, (though there be no question, but as you may find in Bracton and other learned men, he has power to do it); because being professors of the same common-law, they are persuaded, for the most part, to give the same judgments. For example: if Sir Edward Coke, in the last term that he sat as Lord Chief Justice in the Court of Common Pleas, had given an erroneous judgment, is it likely that when he was removed, and made Lord Chief Justice of the King's Bench, he would therefore have reversed the said judgment? It is possible he might, but not very likely. And therefore I do believe there is some other power, by the King constituted, to reverse erroneous judgments, both in the King's Bench and in the Court of Common Pleas.

L. I think not; for there is a statute to the contrary, made 4 *Henry IV*, cap. 23, in these words:

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Whereas, as well in plea real, as in plea personal, after judgment in the court of our Lord the King, the parties be made to come upon grievous pain sometimes before the King himself, sometimes before the King's council, and sometimes to the Parliament, to answer thereof anew, to the great impoverishing of the parties aforesaid, and to the subversion of the common-law of the land, it is ordained and established, that after judgment given in the court of our Lord the King, the parties and their heirs shall be there in peace, until the judgment be undone by attaint, or by error, if there be error, as hath been used by the laws in the times of the King's progenitors.

P. This statute is so far from being repugnant to that I say, as it seemeth to me to have been made expressly to confirm the same. For the substance of the statute is, that there shall be no suit made by either of the parties for anything adjudged, either in the King's Bench, or Court of Common Pleas, before the judgment be undone by error, or corruption proved; and that this was the common-law before the making of this statute, which could not be, except there were before this statute some courts authorized to examine and correct such errors as by the plaintiff should be assigned. The inconvenience which by this statute was to be remedied was this, that often judgment given in the King's courts, by which are meant in this place the King's Bench and Court of Common Pleas, the party against whom the judgment was given, did begin a new suit, and cause his adversary to come before the King himself. Here, by the King himself must be understood the

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King in person: for though in a writ by the words *coram nobis* is understood the King's Bench, yet in a statute it is never so; nor is it strange, seeing in those days the King did usually sit in court with his council to hear causes, as sometimes King James. And sometimes the same parties commenced their suit before the Privy Council, though the King were absent, and sometimes before the Parliament, the former judgment yet standing. For remedy whereof, it was ordained by this statute, that no man should renew his suit till the former judgment was undone by attaint or error; which reversing of a judgment had been impossible, if there had been no court besides the aforesaid two courts, wherein the errors might be assigned, examined, and judged; for no court can be esteemed, in law or reason, a competent judge of its own errors. There was therefore before this statute, some other court existent for the hearing of errors, and reversing of erroneous judgments. What court this was, I inquire not yet; but I am sure it could not be either the Parliament or the Privy Council, or the court wherein the erroneous judgment was given.

L. The *Doctor and Student* discourses of this statute (cap. 18 et seq.) much otherwise than you do. For the author of that book saith, that against an erroneous judgment all remedy is by this statute taken away. And though neither reason, nor the office of a King, nor any law positive, can prohibit the remedying of any injury, much less of an unjust sentence; yet he shows many statutes, wherein a man's conscience ought to prevail above the law.

P. Upon what ground can he pretend, that all remedy in this case is by this statute prohibited?

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L. He says it is thereby enacted, that judgment given by the King's Courts shall not be examined in the Chancery, Parliament, nor elsewhere.

P. Is there any mention of Chancery in this act? It cannot be examined before the King and his council, nor before the Parliament; but you see that before the statute it was examined somewhere, and that this statute will have it examined there again. And seeing the Chancery was altogether the highest office of judicature in the kingdom for matter of equity, and that the Chancery is not here forbidden to examine the judgments of all other courts, at least it is not taken from it by this statute. But what cases are there in this chapter of the Doctor and Student, by which it can be made probable, that when law and conscience, or law and equity, seem to oppugn one another, the written law should be preferred?

L. If the defendant wage his law in an action of debt brought upon a true debt, the plaintiff hath no means to come to his debt by way of compulsion, neither by *subpœna*, nor otherwise; and yet the defendant is bound in conscience to pay him.

P. Here is no preferring, that I see, of the law above conscience or equity. For the plaintiff in this case loseth not his debt for want either of law, or equity, but for want of proof; for neither law nor equity can give a man his right, unless he prove it.

L. Also if the grand jury in attaint affirm a false verdict given by the petty jury, there is no further remedy, but the conscience of the party.

P. Here again the want of proof is the want of remedy. For if he can prove that the verdict given

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L. But there is a statute made since, *viz.* 27 *Eliz. c.* 8, by which that statute of 4 *Hen. IV.* 23, is in part taken away. For by that statute, erroneous judgments given in the King's Bench, are by a writ of error to be examined in the Exchequer-chamber, before the justices of the Common Bench and the Barons of the Exchequer; and by the preamble of this act it appears, that erroneous judgments are only to be reformed by the High Court of Parliament.

P. But here is no mention, that the judgments given in the Court of Common Pleas should be brought in to be examined in the Exchequer-chamber. Why therefore may not the Court of Chancery examine a judgment given in the Court of Common Pleas?

L. You deny not but, by the ancient law of England, the King's Bench may examine the judgment given in the Court of Common Pleas.

P. It is true. But why may not also the Court of Chancery do the same, especially if the fault of the judgment be against equity, and not against the letter of the law?

L. There is no necessity of that; for the same court may examine both the letter and the equity of the statute.

P. You see by this, that the jurisdiction of courts cannot easily be distinguished, but by the King himself in his Parliament. The lawyers themselves

cannot do it; for you see what contention there is between courts, as well as between particular men. And whereas you say, that law of 4 *Hen. IV.* 23, is by that of 27 *Eliz. c.* 8, taken away, I do not find it so. I find indeed a diversity of opinion between the makers of the former and the latter statute, in the preamble of the latter and conclusion of the former. The preamble of the latter is, forasmuch as erroneous judgments given in the Court called the King's Bench, are only to be reformed in the High Court of Parliament; and the conclusion of the former is, that the contrary was law in the times of the King's progenitors. These are no parts of those laws, but opinions only concerning the ancient custom in that case, arising from the different opinions of the lawyers in those different times, neither commanding nor forbidding anything; though of the statutes themselves, the one forbids that such pleas be brought before the Parliament, the other forbids it not. But yet, if after the act of *Hen. IV* such a plea had been brought before the Parliament, the Parliament might have heard and determined it. For the statute forbids not that; nor can any law have the force to hinder the Parliament of any jurisdiction whatsoever they please to take upon them, seeing it is a court of the King and of all the people together, both Lords and Commons. Of Courts.

L. Though it be, yet seeing the King (as Sir Edward Coke affirms, 4 *Inst.* p. 71) hath committed all his power judicial, some to one court, and some to another, so as if any man would render himself to the judgment of the King, in such case where the King hath committed all his power

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judicial to others, such a render should be to no effect. And p. 73, he saith farther: that in this court, the Kings of this realm have sitten on the high bench, and the judges of that court on the lower bench, at his feet; but judicature belongeth only to the judges of that court, and in his presence they answer all motions.

P. I cannot believe that Sir Edward Coke, how much soever he desired to advance the authority of himself and other justices of the common-law, could mean that the King in the King's Bench sat as a spectator only, and might not have answered all motions, which his judges answered, if he had seen cause for it. For he knew that the King was supreme judge then in all causes temporal, and is now in all causes both temporal and ecclesiastical; and that there is an exceeding great penalty ordained by the laws for them that shall deny it. But Sir Edward Coke, as he had (you see) in many places before, hath put a fallacy upon himself, by not distinguishing between committing and transferring. He that transferreth his power, hath deprived himself of it: but he that committeth it to another to be exercised in his name and under him, is still in the possession of the same power. And therefore, if a man render himself, that is to say, appealeth to the King from any judge whatsoever, the King may receive his appeal; and it shall be effectual.

L. Besides these two courts, the King's Bench for Pleas of the Crown, and the Court of Common Pleas for causes civil, according to the common-law of England, there is another court of justice, that hath jurisdiction in causes both civil and cri-

minal, and is as ancient a court at least as the Court of Common Pleas, and this is the Court of the Lord Admiral; but the proceedings therein are according to the laws of the Roman empire, and the causes to be determined there are such as arise upon the marine sea: for so it is ordained by divers statutes, and confirmed by many precedents.

P. As for the statutes, they are always law, and reason also; for they are made by the assent of all the kingdom; but precedents are judgments, one contrary to another; I mean divers men in divers ages, upon the same case give divers judgments. Therefore I will ask your opinion once more concerning any judgments besides those of the King, as to their validity in law. But what is the difference between the proceedings of the Court of Admiralty, and the Court of Common-law?

L. One is, that the Court of Admiralty proceedeth by two witnesses, without any either grand-jury to indict, or petty to convict; and the judge giveth sentence according to the laws imperial, which of old time were in force in all this part of Europe, and now are laws, not by the will of any other Emperor or foreign power, but by the will of the Kings of England that have given them force in their own dominions; the reason whereof seems to be, that the causes that arise at sea are very often between us, and people of other nations, such as are governed for the most part by the self-same laws imperial.

P. How can it precisely enough be determined at sea, especially near the mouth of a very great river, whether it be upon the sea, or within the land? For the rivers also are, as well as their banks, within or a part of one country or other.

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L. Truly the question is difficult; and there have been many suits about it, wherein the question has been, whose jurisdiction it is in.

P. Nor do I see how it can be decided but by the King himself, in case it be not declared in the Lord Admiral's letters-patent.

L. But though there be in the letters-patent a power given to hold plea in some certain cases, not contrary to any of the statutes concerning the Admiralty, the justices of the common-law may send a prohibition to that court, to proceed in the plea, though it be with a *non-obstante* of any statute.

P. Methinks that that should be against the right of the Crown, which cannot be taken from it by any subject. For that argument of Sir Edward Coke's, that the King has given away all his judicial power, is worth nothing: because, as I have said before, he cannot give away the essential rights of his Crown, and because by a *non-obstante* he declares he is not deceived in his grant.

L. But you may see by the precedents alleged by Sir Edward Coke, the contrary has been perpetually practised.

P. I see not that perpetually. For who can tell but there may have been given other judgments, in such cases, which have either been not preserved in the records, or else by Sir Edward Coke, because they were against his opinion, not alleged? For this is possible, though you will not grant it to be very likely. Therefore I insist only upon this, that no record of a judgment is a law, save only to the party pleading until he can by law reverse the former judgment. And as to the proceeding without juries, by two sufficient witnesses, I do not see what harm

can proceed from it to the commonwealth, nor consequently any just quarrel that the justice of the common-law can have against their proceedings in the Admiralty. For the proof of the fact in both courts lieth merely on the witnesses; and the difference is no more, but that in the imperial law, the judge of the court judgeth of the testimony of the witnesses, and the jury doth it in a court of common-law. Besides, if a court of common-law should chance to encroach upon the jurisdiction of the Admiral, may not he send a prohibition to the court of common-law to forbid their proceeding? I pray you tell me what reason there is for the one, more than for the other?

L. I know none but long custom, for I think it was never done. The highest ordinary court in England is the Court of Chancery, wherein the Lord Chancellor, or otherwise Keeper of the Great Seal, is the only judge. This court is very ancient, as appears by Sir Edward Coke, 4 *Inst.* p. 78, where he nameth the Chancellors of King Edgar, King Etheldred, King Edmund, and King Edward the Confessor. His office is given to him, without letters-patent, by the King's delivery to him of the Great Seal of England; and whosoever hath the keeping of the Great Seal of England, hath the same, and the whole jurisdiction that the Lord Chancellor ever had by the statute of 5 *Eliz. c.* 18, wherein it is declared, that such is, and always has been the common-law. And Sir Edward Coke says, he has his name of Chancellor from the highest point of his jurisdiction, viz. a *cancellando;* that is, from cancelling the King's letters-patent, by drawing strokes through it like a lattice.

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P. Very pretty. It is well enough known that *Cancellarius* was a great officer under the Roman empire, whereof this island was once a member, and that the office came into this kingdom, either with, or in imitation of the Roman government. Also, it was long after the time of the twelve Cæsars, that this officer was created in the state of Rome. For till after Septimius Severus his time, the emperors did diligently enough take cognizance of all causes and complaints for judgments given in the Courts of the Prætors, which were in Rome the same that the judges of the common-law are here. But by the continual civil wars in after times for the choosing of Emperors, that diligence by little and little ceased. And afterwards, as I have read in a very good author of the Roman civil law, the number of complaints being much increased, and being more than the Emperor could dispatch, he appointed an officer as his clerk, to receive all such petitions; and that this clerk caused a partition to be made in a room convenient, in which partition-wall, at the heighth of a man's reach, he placed at convenient distances certain bars; so that when a suitor came to deliver his petition to the clerk, who was sometimes absent, he had no more to do but to throw in his petition between those bars, which in Latin are called properly *cancelli;* not that any certain form of those bars, or any bars at all were necessary, for they might have been thrown over, though the whole space had been left open; but because they were *cancelli*, the clerk attendant, and keeping his office there, was called *Cancellarius*. And any court bar may properly enough be called *cancelli*, which does not signify a lattice; for that

is but a mere conjecture grounded upon no history nor grammar, but taken up at first, as is likely, by some boy that could find no other word in the dictionary for a lattice, but *cancelli*. The office of this Chancellor was at first but to breviate the matter of the petitions, for the easing of the Emperor; but complaints increasing daily, they were too many, considering other businesses more necessary for the Emperor to determine; and this caused the Emperor to commit the determination of them to the Chancellor again. What reason doth Sir Edward Coke allege to prove, that the highest point of the Chancellor's jurisdiction is to cancel his master's letters-patent, after they were sealed with his master's seal; unless he hold plea concerning the validity of them, or of his master's meaning in them, or of the surreptitious getting of them, or of the abusing of them, which are all causes of equity? Also, seeing the Chancellor hath his office only by the delivery of the Great Seal, without any instruction, or limitation of the process of his court to be used; it is manifest, that in all causes whereof he has the hearing, he may proceed by such manner of hearing and examining of witnesses, with jury or without jury, as he shall think fittest for the exactness, expedition, and equity of the decrees. And therefore, if he think the custom of proceeding by jury, according to the custom of England in Courts of common-law, tend more to equity, which is the scope of all the judges in the world, or ought to be, he ought to use that method; or if he think better of another proceeding, he may use it, if it be not forbidden by a statute.

L. As for this reasoning of yours, I think it well

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enough. But there ought to be had also a reverend respect to customs not unreasonable; and therefore, I think, Sir Edward Coke says not amiss, that in such cases where the Chancellor will proceed by the rule of the common-law, he ought to deliver the record in the King's Bench; and also it is necessary for the Lord Chancellor to take care of not exceeding as it is limited by statutes.

P. What are the statutes by which his jurisdiction is limited? I know that by the 27 *Eliz. c.* 8, he cannot reverse a judgment given in the King's Bench for debt, detinue, &c.; nor before the statute could he ever, by virtue of his office, reverse a judgment in pleas of the Crown, given by the King's Bench, that hath the cognizance of such pleas. Nor need he; for the judges themselves, when they think there is need to relieve a man oppressed by ill witnesses, or power of great men prevailing on the jury, or by error of the jury, though it be in case of felony, may stay the execution and inform the King, who will in equity relieve him. As to the regard we ought to have to custom, we will consider of it afterwards.

L. First, in a Parliament holden the 13th of Richard II, the Commons petitioned the King, that neither the Chancellor, nor other Chancellor, do make any order against the common-law, nor that any judgment be given without due process of law.

P. This is no unreasonable petition; for the common-law is nothing else but equity: and by this statute it appears, that the Chancellors, before that statute, made bolder with the Courts of common-law than they did afterward; but it does not appear that common-law in this statute signifies any thing

else but generally the law temporal of the realm, nor was this statute ever printed, that such as I might take notice of it. But whether it be a statute or not, I know not, till you tell me what the Parliament answered to this petition.

L. The King's answer was, the usages heretofore shall stand, so as the King's royalty be saved.

P. This is flatly against Sir Edward Coke, concerning the Chancery.

L. In another Parliament, 17 *Rich. II*, it is enacted, at the petition of the Commons, that forasmuch as people were compelled to come before the King's Council, or in Chancery, by writs grounded upon untrue suggestions, the Chancellor for the time being, presently after such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his discretion, to him which is so travelled unduly as is aforesaid.

P. By this statute it appears, that when a complaint is made in Chancery upon undue suggestions, the Chancellor shall have the examination of the said suggestions, and as he may award damages when the suggestions are untrue, so he may also proceed by process to the determining of the cause, whether it be real or personal, so it be not criminal.

L. Also the Commons petitioned in a Parliament of 2 *Hen. IV*, (not printed) that no writs, nor privy seals, be sued out of Chancery, Exchequer, or other places, to any man to appear at a day upon a pain, either before the King and his Council, or in any other place, contrary to the ordinary course of common-law.

P. What answer was given to this petition by the King?

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L. That such writs should not be granted without necessity.

P. Here again, you see, the King may deny or grant any petitions in Parliament, either as he thinks it necessary, as in this place, or as he thinks it prejudicial or not prejudicial to his royalty; as in the answer of the former petition, which is a sufficient proof that no part of his legislative power, or any other essential part of royalty, can be taken from him by a statute. Now seeing it is granted that equity is the same thing with the law of reason, and seeing Sir Edward Coke (1 *Inst.* sec. xxi.), defines equity to be a certain reason comprehended in no writing, but consisting only in right reason, which interpreteth and amendeth the written law; I would fain know to what end there should be any other Court of Equity at all, either before the Chancellor or any other person, besides the Judges of the Civil or Common Pleas? Nay, I am sure you can allege none but this, that there was a neeessity for a higher Court of Equity than the Courts of common-law, to remedy the errors in judgment given by the justices of inferior courts; and the errors in Chancery were irrevocable, except by Parliament, or by special commission appointed thereunto by the King.

L. But Sir Edward Coke says, that seeing matters of fact by the common-law are triable by a jury of twelve men, this court should not draw the matter *ad aliud examen*, that is, to another kind of examination, *viz.* deposition of witnesses, which should be but evidence to a jury.

P. Is the deposition of witnesses any more or less, than evidence to the Lord Chancellor? It

is not therefore another kind of examination; nor is a jury more capable of duly examining witnesses than a Lord Chancellor. Besides, seeing all courts are bound to judge according to equity, and that all judges in a case of equity may sometimes be deceived, what harm is there to any man, or to the state, if there be a subordination of judges in equity, as well as of judges in common-law? Seeing it is provided by an Act of Parliament, to avoid vexation, that *subpœnas* shall not be granted till surety be found to satisfy the party so grieved and vexed for his damages and expenses, if so be the matter may not be made good which is contained in the bill.

L. There is another statute of 31 *Hen. VI.* c. 2, wherein there is a proviso cited by Sir Edward Coke in these words: "*Provided that no matter determinable by the laws of the realm, shall be by the said Act determined in other form, than after the course of the same law in the King's Courts, having the determination of the same law.*"

P. This law was made but for seven years, and never continued by any other Parliament, and the motive of this law was the great riots, extortions, oppressions, &c. used during the time of the insurrection of John Cade, and the indictments and condemnations wrongfully had by this usurped authority. And thereupon the Parliament ordained, that for seven years following no man should disobey any of the King's writs under the Great Seal, or should refuse to appear upon proclamation before the King's Council, or in the Chancery, to answer to riots, extortions, &c.; for the first time he should lose, &c. Wherein there is nothing at all concerning the jurisdiction of the Chancery or any other court,

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but an extraordinary power given to the Chancery, and to the King's Privy Council, to determine of those crimes, which were not before that time triable but only by the King's Bench or special commission. For the Act was made expressly for the punishment of a great multitude of crimes committed by those who had acted under the said Cade's authority; to which Act the proviso was added which is here mentioned, that the proceedings in those Courts of Chancery, and of the King's Council, should be such as should be used in the courts, to which the said causes, before this Act was made, do belong: that is to say, such causes as were criminal, should be after the order of the King's Bench; and such causes as were not criminal, but only against equity, should be tried after the manner of the Chancery, or in some cases according to the proceedings in the Exchequer. I wonder why Sir Edward Coke should cite a statute, as this is, above two hundred years before expired, and other two petitions, as if they were statutes, when they were not passed by the King; unless he did it on purpose to diminish, as he endeavours to do throughout his Institutes, the King's authority, or to insinuate his own opinions among the people for the law of the land; for that also he endeavours by inserting Latin sentences, both in his text and in the margin, as if they were principles of the law of reason, without any authority of ancient lawyers, or any certainty of reason in themselves, to make men believe they are the very grounds of the law of England. Now as to the authority you ascribe to custom, I deny that any custom of its own nature can amount to the authority of a law. For if the custom be unreason-

able, you must, with all other lawyers, confess that it is no law, but ought to abolished; and if the custom be reasonable, it is not the custom, but the equity that makes it law. For what need is there to make reason law by any custom how long soever, when the law of reason is eternal? Besides, you cannot find it in any statute, though *lex et consuetudo* be often mentioned as things to be followed by the judges in their judgments, that *consuetudines*, that is to say, customs or usages, did imply any long continuance of former time; but that it signified such use and custom of proceeding, as was then immediately in being before the making of such statute. Nor shall you find in any statute the word common-law, which may not be there well interpreted for any of the laws of England temporal; for it is not the singularity of process used in any court that can distinguish it, so as to make it a different law from the law of the whole nation.

L. If all the courts were, as you think, courts of equity, would it not be incommodious to the commonwealth?

P. I think not; unless perhaps you may say, that seeing the judges, whether they have many or few causes to be heard before them, have but the same wages from the King, they may be too much inclined to put off the causes they use to hear, for the easing of themselves, to some other court, to the delay of justice, and damage of the parties suing.

L. You are very much deceived in that; for on the contrary, the contention between the courts for jurisdiction is, of who shall have most causes brought before them.

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P. I cry you mercy, I smelt not that.

L. Seeing also all judges ought to give their sentence according to equity, if it should chance that a written law should be against the law of reason, which is equity, I cannot imagine in that case how any judgment can be righteous.

P. It cannot be that a written law should be against reason; for nothing is more reasonable than that every man should obey the law which he hath himself assented to. But that is not always the law, which is signified by *grammatical* construction of the letter, but that which the legislature thereby intended should be in force; which intention, I confess, is a very hard matter many times to pick out of the words of the statute, and requires great ability of understanding, and greater meditations and consideration of such conjuncture of occasions and incommodities, as needed a new law for a remedy. For there is scarce anything so clearly written, that when the cause thereof is forgotten, may not be wrested by an ignorant grammarian, or a cavilling logician, to the injury, oppression, or perhaps destruction of an honest man. And for this reason the Judges deserve that honour and profit they enjoy. Since the determination of what particular causes every particular court should have cognizance, is a thing not yet sufficiently explained, and is in itself so difficult, as that the sages of the law themselves, (the reason Sir Edward Coke will leave to law itself), are not yet agreed upon it; how is it possible for a man who is no professed or no profound lawyer, to take notice in what court he may lawfully begin his suit, or give counsel in it to his client?

L. I confess that no man can be bound to take notice of the jurisdiction of courts, till all the courts be agreed upon it amongst themselves; but what rule to give judgment by, a judge can have, so as never to contradict the law written, nor displease his legislator, I understand not. Of Courts.

P. I think he may avoid both, if he take care by his sentence that he neither punish an innocent man, nor deprive him of his damages due from one that maliciously sueth him without reasonable cause, which to the most of rational men and unbiassed, is not, in my opinion, very difficult. And though a judge should, as all men may do, err in his judgment, yet there is always such power in the laws of England, as may content the parties, either in the Chancery, or by commissioners of their own choosing, authorized by the King; for every man is bound to acquiesce in the sentence of the judges he chooseth.

L. In what cases can the true construction of the letter be contrary to the meaning of the lawmaker?

P. Very many, whereof Sir Edward Coke nameth three: fraud, accident, and breach of confidence. But there be many more; for there be a very great many reasonable exceptions almost to every general rule, which the makers of the rule could not foresee; and very many words in every statute, especially long ones, that are, as to *grammar*, of ambiguous signification, and yet to them that know well to what end the statute was made, perspicuous enough; and many connexions of doubtful reference, which by a *grammarian* may be cavilled at, though the intention of the lawmaker be never so perspicuous. And these are the difficulties which the

Of Courts. judges ought to master, and can do it in respect of their ability for which they are chosen, as well as can be hoped for; and yet there are other men can do the same, or else the judges' places could not be from time to time supplied. The bishops commonly are the most able and rational men, and obliged by their profession to study equity, because it is the law of God; and are therefore capable of being judges in a court of equity. They are the men that teach the people what is sin; that is to say, they are the doctors in cases of conscience. What reason then can you show me, why it is unfit and hurtful to the commonwealth that a bishop should be a Chancellor; as they were most often before the time of Henry VIII, and since that time once in the reign of King James?

L. But Sir Edward says, that soon after that a Chancellor was made which was no professor of the law, he finds in the rolls of the Parliament a grievous complaint by the whole body of the realm, and a petition that the most wise and able men within the realm might be chosen Chancellors.

P. That petition was reasonable; but it does not say which are the abler men, the judges of the common-law, or the bishops.

L. That is not the great question as to the ability of a judge; both of one and the other, there are able men in their own way. But when a judge of equity has need, almost in every case, to consider as well the statute-law, as the law of reason, he cannot perform his office perfectly, unless he be also ready in the statutes.

P. I see no great need he has to be ready in the statutes. In the hearing of a cause, do the judges

of the common-law inform the counsel at the bar what the statute is, or the counsel the judges?

L. The counsel inform the judges.

P. Why may they not as well inform the Chancellor? Unless you will say, that a bishop understands not as well as a lawyer what is sense, when he hears it read in English. No, no; both the one and the other are able enough: but to be able enough is not enough, when not the difficulty of the case only, but also the passion of the judge is to be conquered. I forgot to tell you of the statute of 36 *Edw. III*, c. 9, that if any person thinking himself grieved contrary to any of the articles above-written, or others contained in divers statutes, will come to the Chancery, or any for him, and thereof make his complaint, he shall presently there have remedy by force of the said articles and statutes, without elsewhere pursuing to have remedy. By the words of this statute it is very apparent, in my opinion, that the Chancery may hold plea upon the complaint of the party grieved, in any case triable at the common-law; because the party shall have present remedy in that court, by force of this Act, without pursuing for remedy elsewhere.

L. Yes; but Sir Edward Coke (4 *Inst.* p. 82) answers this objection in this manner. These words, says he, *he shall have remedy*, signify no more but that he shall have presently there a remedial writ grounded upon those statutes, to give him remedy at the common-law.

P. Very like Sir Edward Coke thought, as soon as the party had his writ, he had his remedy, though he kept the writ in his pocket without pursuing

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his complaint elsewhere: or else he thought, that the Common-bench was not elsewhere than in the Chancery.

L. Then there is the Court of———

P. Let us stop here; for this which you have said satisfies me, that seek no more than to distinguish between justice and equity; and from it I conclude, that justice fulfils the law, and equity interprets the law, and amends the judgments given upon the same law. Wherein I depart not much from the definition of equity cited in Sir Edward Coke (1 *Inst.* sec .xxi.); *viz.* equity is a certain perfect reason, that interpreteth and amendeth the law written; though I construe it a little otherwise than he would have done; for no one can mend a law but he that can make it, and therefore I say it amends not the law, but the judgments only when they are erroneous. And now let us consider of crimes in particular, the pleas whereof are commonly called the Pleas of the Crown, and of the punishments belonging to them. And first of the highest crime of all, which is high-treason. Tell me, what is high-treason?

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L. The first statute that declareth what is high-treason, is the statute of the 25 *Edw. III*, in these words: "Whereas divers opinions have been before this time, in what case treason shall be said, and in what not; the King, at the request of the Lords and of the Commons, hath made declaration in the manner as hereafter follows: that is to say, when a man doth compass or imagine the death of our Lord the King, of our Lady the Queen, or of their eldest son and heir; or if a man doth violate the King's companion, or the King's eldest daughter

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unmarried, or the wife of the King's eldest son and heir; or if a man do levy war against our Lord the King in his realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere; and thereof be provably attainted by open deed by people of their condition: and if a man counterfeit the King's Great or Privy Seal, or his money: and if a man bring false money into this realm counterfeit to the money of England, as the money called Lushburgh, or other like to the said money of England, knowing the money to be false, to merchandize, and make payment in deceit of our said Lord the King, and of his people: and if a man slay the Chancellor, Treasurer, or the King's Justices of one Bench or the other, Justices in Eyre, or Justices of Assizes, and all other justices assigned to hear and determine, being in their places and doing their offices. And is to be understood in the cases above rehearsed, that that ought to be adjudged treason, which extends to our royal Lord the King, and his royal Majesty; and of such treason the forfeiture of the escheats pertains to our Lord the King, as well the lands and tenements holden of others, as himself. And moreover there is another manner of treason; that is to say, when a servant slayeth his master, or a wife her husband; or when a man, secular or religious, slayeth his prelate, to whom he oweth faith and obedience; and of such treason the escheats ought to pertain to every Lord of his own fee. And because many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded, that if any case supposed treason, which is not above specified, doth happen before

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any justices, the justices shall tarry without giving any judgment of the treason, till the cause be showed and declared before the King and his Parliament, whether it ought to be adjudged treason or other felony."

P. I desired to understand what treason is, wherein no enumeration of facts can give me satisfaction. Treason is a crime of itself, *malum in se*, and therefore a crime at the common-law; and high-treason the highest crime at the common-law that can be. And therefore not the statute only, but reason without a statute makes it a crime. And this appears by the preamble, where it is intimated, that all men, though of divers opinions, did condemn it by the name of treason, though they knew not what treason meant, but were forced to request the King to determine it. That which I desire to know is, how treason might have been defined without the statute, by a man that has no other faculty to make the definition of it, than by mere natural reason.

L. When none of the lawyers have done it, you are not to expect that I should undertake it on such a sudden.

P. You know that *salus populi* is *suprema lex*, that is to say, the safety of the people is the highest law; and that the safety of the people of a kingdom consisteth in the safety of the King, and of the strength necessary to defend his people, both against foreign enemies and rebellious subjects. And from this I infer, that to compass, that is, to design, the death of the then present King, was high treason before the making of this statute, as being a designing of a civil war and the destruction of the people. 2. That the design to kill the King's

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wife, or to violate her chastity, as also to violate the chastity of the King's heir-apparent, or of his eldest daughter unmarried, as tending to the destruction of the certainty of the King's issue, and by consequence to the raising of contentions about the Crown, and destruction of the people in succeeding time by civil war, was therefore high-treason before this statute. 3. That to levy war against the King within the realm, and aiding the King's enemies, either within or without the realm, are tending to the King's destruction or disherison, and was high-treason, before this statute, by the common-law. 4. That counterfeiting the principal seals of the kingdom, by which the King governeth his people, tendeth to the confusion of government, and consequently to the destruction of the people, and was therefore treason before the statute. 5. If a soldier design the killing of his general or other officer in time of battle, or a captain hover doubtfully with his troops, with intention to gain the favour of him that shall chance to get the victory, it tendeth to the destruction both of King and people, whether the King be present or absent, and was high-treason before the statute. 6. If any man had imprisoned the King's person, he had made him incapable of defending his people, and it was therefore high-treason before the statute. 7. If any man had, with design to raise rebellion against the King, by words written or advisedly uttered, denied the King regnant to be their lawful King, he that wrote, preached, or spoke such words, living then under the protection of the King's laws, it had been high-treason before the statute, for the reasons aforesaid. And perhaps there may be some other cases upon

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this statute, which I cannot presently think upon. But the killing of a justice or other officer, as is determined by the statute, is not otherwise high-treason, but by the statute. And to distinguish that which is treason by the common-law from all other inferior crimes, we are to consider, that if such high-treason should take effect, it would destroy all laws at once; and being done by a subject, it is a return to hostility by treachery; and consequently, such as are traitors may, by the law of reason, be dealt withal as ignoble and treacherous enemies: but the greatest of other crimes, for the most part, are breaches of one only, or at least of very few laws.

L. Whether this you say be true or false, the law is now unquestionable, by a statute made in the 1st and 2nd years of *Queen Mary*, whereby there is nothing to be esteemed treason, besides those few offences specially mentioned in the act of 25 *Edward III.*

P. Amongst these great crimes the greatest is that which is committed by one that has been trusted and loved by him whose death he so designeth: for a man cannot well take heed of those whom he thinks he hath obliged, whereas an open enemy gives a man warning before he acteth. And this it is for which the statute hath declared, that it is another kind of treason, when a servant killeth his master or mistress, or a wife killeth her husband, or a clerk killeth his prelate. And I should think it petty treason also, though it be not within the words of the statute, when a tenant in fee, that holdeth by homage and fealty, shall kill the lord of his fee; for fealty is an oath of allegiance to the lord of the fee; saving he may not keep

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his oath in any thing sworn to, if it be against the King. For homage, as it is expressed in a statute of 17 *Edw. II*, is the greatest submission that is possible to be made to one man by another. For the tenant shall hold his hands together between the hands of his landlord, and shall say thus; I become your man from this day forth for life, for member, and for worldly honour, and shall owe that my faith for the lands that I shall hold of you, saving the faith that I owe unto our Sovereign Lord the King, and to many other lords. Which homage, if made to the King, is equivalent to a promise of simple obedience, and if made to another lord, there is nothing excepted but the allegiance to the King; and that which is called fealty, is but the same confirmed by an oath.

L. But Sir Edward Coke, (4 *Inst.* p. 11), denies that a traitor is in legal understanding the King's enemy. For enemies, saith he, be those that be out of the allegiance of the King. And his reason is, because, if a subject join with a foreign enemy, and come into England with him, and be taken prisoner here, he shall not be ransomed, or proceeded with as an enemy shall, but he shall be taken as a traitor to the King. Whereas an enemy coming in open hostility, and taken, shall either be executed by martial law, or ransomed; for he cannot be indicted of treason, for that he never was in the protection and ligeance of the King; and the indictment of the treason saith, *contra ligeantiam suam debitam.*

P. This is not an argument worthy of the meanest lawyer. Did Sir Edward Coke think it impossible for a King lawfully to kill a man, by what

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death soever, without an indictment, when it is manifestly proved he was his open enemy? Indictment is a form of accusation peculiar to England, by the command of some King of England, and retained still, and therefore a law to this country of England. But if it were not lawful to put a man to death otherwise than by an indictment, no enemy could be put to death at all in other nations, because they proceed not, as we do, by indictment. Again, when an open enemy is taken and put to death by judgment of martial-law; it is not the law of the general or council of war, that an enemy shall be thus proceeded with, but the law of the King contained in their commissions; such as from time to time the Kings have thought fit, in whose will it always resteth, whether an open enemy, when he is taken, shall be put to death, or no, and by what death; and whether he shall be ransomed, or no, and at what price. Then for the nature of treason by rebellion; is it not a return to hostility? What else does rebellion signify? William the Conqueror subdued this kingdom; some he killed; some upon promise of future obedience he took to mercy, and they became his subjects, and swore allegiance to him. If therefore they renew the war against him, are they not again open enemies? Or if any of them lurking under his laws, seek occasion thereby to kill him secretly, and come to be known, may he not be proceeded against as an enemy, who, though he had not committed what he designed, yet had certainly a hostile design? Did not the Long Parliament declare all those for enemies to the state, that opposed their proceedings against the late King? But Sir Edward Coke does seldom

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well distinguish, when there are two divers names for one and the same thing: though one contain the other, he makes them always different; as if it could not be that one and the same man should be both an enemy and a traitor. But now let us come to his comment upon this statute. The statute says (as it is printed in English) when a man doth compass, or imagine, the death of our Lord the King, &c. What is the meaning of the word compassing, or imagining?

L. On this place Sir Edward Coke says, that before the making of this act, *voluntas reputabatur pro facto*, the will was taken for the deed. And so saith Bracton; *spectatur voluntas, et non exitus; et nihil interest utrum quis occidat, aut causam præbeat*, that is to say, the cause of the killing. Now Sir Edward Coke says, this was the law before the statute; and that to be a cause of the killing, is to declare the same by some open deed tending to the execution of his intent, or which might be cause of death.

P. Is there any Englishman can understand, that to cause the death of a man, and to declare the same, is all one thing? And if this were so, and that such was the common-law before the statute, by what words in the statute is it taken away?

L. It is not taken away, but the manner how it must be proved is thus determined, that it must be proved by some open deed, as providing of weapons, powder, poison, assaying of armour, sending of letters, &c.

P. But what is the crime itself, which this statute maketh treason? For as I understand the words, to compass or imagine the King's death, &c. the

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compassing (as it is in the English) is the only thing which is made high-treason. So that not only the killing, but the design, is made high-treason; or, as it is in the French record, *fait compasser*, that is to say, the causing of others to compass or design the King's death is high-treason; and the words *par overt fait*, are not added as a specification of any treason, or other crime, but only of the proof that is required by the law. Seeing then the crime is the design and purpose to kill the King, or cause him to be killed, and lieth hidden in the breast of him that is accused; what other proof can there be had of it than words spoken or written? And therefore, if there be sufficient witness that he by words declared that he had such a design, there can be no question, but that he is comprehended within the statute. Sir Edward Coke doth not deny, but, that if he confess this design, either by word or writing, he is within the statute. As for that common saying, that bare words may make a heretic but not a traitor, which Sir Edward Coke on this occasion maketh use of, they are to little purpose; seeing that this statute maketh not the words high-treason, but the intention, whereof the words are but a testimony: and that common saying is false as it is generally pronounced. For there were divers statutes made afterwards, though now expired, which made bare words to be treason without any other deed; as, 1 *Eliz. c.* 6, and 13 *Eliz. c.* 1, if a man should publicly preach that the King were an usurper, or that the right of the crown belonged to any other than the King that reigned, there is no doubt but it were treason, not only within this statute of Edward III, but also within

the statute of 1 *Edw. VI, c.* 12, which are both still in force. Of crimes capital.

L. Not only so; but if a subject should counsel any other man to kill the King, Queen, or heir-apparent to the Crown, it would at this day be adjudged high-treason; and yet it is no more than bare words. In the third year of King James, Henry Garnet, a Jesuit priest, to whom some of the gunpowder traitors had revealed their design by way of confession, gave them absolution without any caution taken for their desisting from their purpose, or other provision against the danger, and was therefore condemned and executed as a traitor, though such absolution was nothing else but bare words. Also I find in the reports of Sir John Davis, Attorney-General for Ireland, that in the time of King Henry VI, a man was condemned of treason for saying the King was a natural fool, and unfit to govern. But yet this clause in the statute of *Edw. III*, viz. that the compassing there mentioned ought to be proved by some *overt act*, was by the framers of the statute not without great wisdom and providence inserted; for as Sir Edward Coke very well observeth, when witnesses are examined concerning words only, they never, or very rarely, agree precisely about the words they swear to.

P. I deny not but that it was wisely enough done. But the question is not here of the treason, which is either fact or design, but of the proof, which when it is doubtful, is to be judged by a jury of twelve lawful men. Now whether think you is it a better proof of a man's intention to kill, that he declare the same with his own mouth, so as it may be witnessed, or that he provide weapons,

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powder, poison, or assay arms? If he utter his design by words, the jury has no more to do than to consider the legality of the witnesses, the harmony of their testimonies, or whether the words were spoken advisedly. For they might have been uttered in a disputation, for exercise only; or when he that spake them, had not the use of reason, nor perhaps any design or wish at all, towards the execution of what he talked of. But how a jury, from providing or buying of armour, or buying of gunpowder, or from any other overt act, not treason in itself, can infer a design of murdering the King, unless there appear some words also signifying to what end he made such provision, I cannot easily conceive. Therefore, as the jury on the whole matter, words and deeds, shall ground their judgment concerning design or not design, so, in reason, they ought to give verdict. But to come to the treason of counterfeiting the great or privy-seal, seeing there are so many ways for a cheating fellow to make use of these seals, to the cozening of the King and his people; why are not all such abuses high-treason, as well as the making of a false seal?

L. So they are; for Sir Edward Coke produceth a record of one that was drawn and hanged for taking the great seal from an expired patent, and fastening it to a counterfeit commission to gather money. But he approveth not the judgment, because it is the judgment for petty treason: also, because the jury did not find him guilty of the offence laid in the indictment, which was, the counterfeiting of the great seal, but found the special matter, for which the offender was drawn and hanged.

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P. Seeing this crime of taking the great seal from one writing, and fastening it to another, was not found high-treason by the jury, nor could be found upon special matter to be the other kind of treason mentioned in the same statute; what grou had either the jury to find it treason, or the judge to pronounce sentence upon it?

L. I cannot tell. Sir Edward Coke seems to think it a false record; for hereupon he saith, by way of admonition to the reader, that hereby it appeareth how dangerous it is to report a case by the ear.

P. True; but he does not make it apparent that this case was untruly reported; but on the contrary, confesseth that he had perused the same record; and a man may, if it may be done without proof of the falsity, make the same objection to any record whatsoever. For my part, seeing this crime produced the same mischief that ariseth from counterfeiting, I think it reason to understand it as within the statute; and for the difference between the punishments, which are both of them capital, I think it is not worthy to be stood upon; seeing death, which is *ultimum supplicium*, is a satisfaction to the law, as Sir Edward Coke himself hath in another place affirmed. But let us now proceed to other crimes.

L. Appendant to this is another crime, called misprision of treason; which is the concealing of it by any man that knows it; and is called misprision from the French *mespriser*, which signifies to contemn or undervalue. For it is no small crime in any subject, so little to take to heart a known danger to the King's person, and consequently to the whole kingdom, as not to discover not only

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what he knows, but also what he suspecteth of the same, that the truth therefore may be examined. But for such discovery, though the thing prove false, the discoverer shall not, as I think, be taken for a false accuser; if for what he directly affirms, he produce a reasonable proof, and some probability for his suspicion. For else the concealment will seem justifiable by the interest, which is to every man allowed, in the preservation of himself from pain and damage.

P. This I consent to.

L. All other crimes merely temporal, are comprehended under felony or trespass.

P. What is the meaning of the word felony? Does it signify anything that is in its own nature a crime, or that only which is made a crime by some statute? For I remember some statutes that make it felony to transport horses, and some other things, out of the kingdom; which transportation, before such statutes were made, and after the repealing of the same, was no greater crime than any other usual traffic of a merchant.

L. Sir Edward Coke derives the word felony from the Latin word *fel*, the gall of a living creature; and accordingly defines felony to be an act done *animo felleo;* that is to say, a bitter, a cruel act.

P. Etymologies are no definitions, and yet when they are true, they give much light towards the finding out of a definition. But this of Sir Edward Coke's carries with it very little of probability; for there be many things made felony by the statute law, that proceed not from any bitterness of mind at all, and many that proceed from the contrary.

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L. This is matter for a critic, to be picked out of the knowledge of history and foreign languages, and you may perhaps know more of it than I do.

P. All that I, or I think any other, can say in this matter, will amount to no more than a reasonable conjecture, insufficient to sustain any point of controversy in law. The word is not to be found in any of the old Saxon laws, set forth by Mr. Lambard, nor in any statute printed before that of Magna Charta; there it is found. Now Magna Charta was made in the time of Henry III, grandchild to Henry II, Duke of Anjou, a Frenchman born, and bred in the heart of France, whose language might very well retain many words of his ancestors the German Franks, as ours doth of the German Saxons; as also many words of the language of the Gauls, as the Gauls did retain many words of the Greek colony planted at Marseilles. But certain it is, the French lawyers at this day use the word felon, just as our lawyers use the same; whereas the common people of France use the word *filou* in the same sense. But *filou* signifieth, not the man that hath committed such an act as they call felony, but the man that maketh it his trade to maintain himself by the breaking and contemning of all laws generally; and comprehendeth all those unruly people called cheaters, cutpurses, picklocks, catchcloaks, coiners of false money, forgers, thieves, robbers, murderers, and whosoever make use of iniquity on land or sea as a trade or living. The Greeks upon the coast of Asia, where Homer lived, were they that planted the colony of Marseilles. They had a word that signified the same with felon, which was

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φιλήτης, *filetes;* and this *filetes* of Homer signifies properly the same that a felon signifies with us. And therefore Homer makes Apollo to call Mercury φιλήτην, *fileteen,* and ἄρχον φιλήτων. I insist not upon the truth of this etymology, but it is certainly more rational than the *animus felleus* of Sir Edward Coke. And for the matter itself, it is manifest enough, that which we now call murder, robbery, theft, and other practices of felons, are the same that we call felony, and crimes in their own nature without the help of statute. Nor is it the manner of punishment, that distinguisheth the nature of one crime from another; but the mind of the offender and the mischief he intendeth, considered together with the circumstances of person, time, and place.

L. Of felonies, the greatest crime is murder.

P. And what is murder?

L. Murder is the killing of a man upon malice forethought, as by a weapon, or by poison, or any way, if it be done upon antecedent meditation; or thus, murder is the killing of a man in cold blood.

P. I think there is a good definition of murder set down by statute, 52 *Henry III, c.* 25, in these words: Murder, from henceforth, shall not be judged before our justices, where it is found misfortune only, but it shall take place in such as are slain by felony, and not otherwise. And Sir Edward Coke interpreting this statute, 2 *Inst.* p. 148, saith, that the mischief before this statute was, that he that killed a man by misfortune, as by doing any act that was not against law, and yet against his intent the death of a man ensued, this was adjudged murder. But I find no proof of that he allegeth, nor find I any such law among the laws of the Saxons set forth

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by Mr. Lambard. For the word, it is, as Sir Edward Coke noteth, old Saxon, and amongst them it signified no more than a man slain in the field or other place, the author of his death not known. And according hereunto, Bracton, who lived in the time of Magna Charta, defineth it, fol. 134, thus: Murder is the secret killing of a man, when none besides the killer and his companions saw or knew it; so that it was not known who did it, nor fresh suit could be made after the doer. Therefore, every such killing was called murder, before it could be known whether it could be by felony or not; for a man may be found dead that kills himself, or was lawfully killed by another. This name of murder came to be the more horrid, when it was secretly done, for that it made every man to consider of their own danger, and him that saw the dead body, to boggle at it, as a horse will do at a dead horse. And to prevent the same, they had laws in force, to amerce the hundred where it was done, in a sum defined by law to be the price of his life. For in those days, the lives of all sorts of men were valued by money, and the value set down in their written laws. And therefore Sir Edward Coke was mistaken, in that he thought that killing a man by misfortune before the statute of Marlebridge, was adjudged murder. And those secret murders were abominated by the people, for that they were liable to so great a pecuniary punishment for suffering the malefactor to escape. But this grievance was by Canutus, when he reigned, soon eased. For he made a law, that the county in this case should not be charged, unless he were an Englishman that was so slain; but if he were a

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Frenchman, (under which name were comprehended all foreigners, and especially the Normans,) though the slayer escaped, the county was not to be amerced. And this law, though it were very hard and chargeable, when an Englishman was so slain, for his friend to prove he was an Englishman, and also unreasonable to deny the justice to a stranger, yet was it not repealed till the 14th *Edw. III.* By this you see that murder is distinguished from homicide by the statute laws, and not by any common-law without the statute; and that it is comprehended under the general name of felony.

L. And so also is petit treason: and I think so is high-treason also. For in the abovesaid statute in the 25th *Edw. III*, concerning treasons, there is this clause: And because that many other like cases of treason may happen in time to come, which a man cannot think or declare at the present time; it is accorded, that if any other case, supposed treason, which is not above specified, doth happen before any of the justices, the justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the King and his Parliament, whether it be treason or other felony. Which thereby shews that the King and Parliament thought that treason was one of the sorts of felony.

P. And so think I.

L. But Sir Edward Coke denies it to be so at this day. For (1 *Inst. sec.* 745) at the word felony, he saith, that in ancient time this word *felony* was of so large an extent, as that it included high-treason; but afterwards it was resolved, that in the King's pardon or charter, this word *felony* should

extend only to common felonies; and at this day, under the word felony, by law is included petite treason, murder, homicide, burning of houses, burglary, robbery, rape, &c. chance medley, *se defendendo*, and petite larceny. Of crimes capital.

P. He says it was resolved: but by whom?

L. By the justices of assize in the time of Henry IV, as it seems in the margin.

P. Have justices of assize any power by their commission to alter the language of the land and the received sense of words? Or in the question in what case felony shall be said, is it referred to the judges to determine; as in the question in what case treason shall be said, it is referred by the statute of Edward III to the Parliament? I think not; and yet perhaps they may be obliged to disallow a pardon of treason, when mentioning all felonies it nameth not treason, nor specifies it by any description of the fact.

L. Another kind of homicide there is, simply called so, or by the name of manslaughter, and is not murder: and that is, when a man kills another man upon sudden quarrel, during the heat of blood.

P. If two meeting in the street chance to strive who shall go nearest to the wall, and thereupon fighting, one of them kills the other, I believe verily he that first drew his sword, did it of malice forethought, though not long forethought; but whether it be felony or no, it may be doubted. It is true, that the harm done is the same as if it had been done by felony; but the wickedness of the intention was nothing near so great. And supposing it had been done by felony, then it is manifest, by the statute of Marlebridge, that it was very murder.

Of crimes capital.

And when a man for a word or a trifle shall draw his sword and kill another man, can any man imagine that there was not some precedent malice?

L. It is very likely there was malice, more or less: and therefore the law hath ordained for it a punishment equal to that of murder, saving that the offender shall have the benefit of his clergy.

P. The benefit of clergy comes in upon another account, and importeth not any extenuation of the crime. For it is but a relic of the old usurped papal privilege, which is now by many statutes so pared off, as to spread but to few offences, and is become a legal kind of conveying mercy, not only to the clergy, but also to the laity.

L. The work of a judge, you see, is very difficult, and requires a man that hath a faculty of well distinguishing of dissimilitudes in such cases as common judgments think to be the same. A small circumstance may make a great alteration; wherefore a man that cannot well discern, ought not to take upon him the office of a judge.

P. You say very well; for if judges were to follow one another's judgments in precedent cases, all the justice in the world would at length depend upon the sentence of a few learned, or unlearned, ignorant men, and have nothing at all to do with the study of reason.

L. A third kind of homicide is when a man kills another, either by misfortune, or in the necessary defence of himself, or of the King, or of his laws; for such killing is neither felony nor crime, saving, as Sir Edward Coke says (3 *Inst. p.* 56), that if the act that a man is doing, when he kills another man, be unlawful, then it is murder. As, if A meaning

Of crimes capital.

to steal a deer in the park of B, shooteth at the deer, and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder, for that the act was unlawful; but if the owner of the park had done the like, shooting at his own deer, it had been by misadventure, and no felony.

P. This is not so distinguished by any statute, but is the *common-law* only of Sir Edward Coke. I believe not a word of it. If a boy be robbing an appletree, and falleth thence upon a man that stands under it and breaks his neck, but by the same chance saveth his own life, Sir Edward Coke, it seems, will have him hanged for it, as if he had fallen of prepensed malice. All that can be called crime in this business is but a simple trespass, to the damage perhaps of sixpence or a shilling. I confess the trespass was an offence against the law, but the falling was none, nor was it by the trespass but by the falling that the man was slain; and as he ought to be quit of the killing, so he ought to make restitution for the trespass. But I believe the cause of Sir Edward Coke's mistake was his not well understanding of Bracton, whom he cites in the margin. For, fol. 120 b. lib. iii. cap. 4, he saith thus: *Sed hic erit distinguendum, utrum quis dederit operam rei licitæ, vel illicitæ; si illicitæ, ut si lapidem projiciebat quis versus locum per quem consueverunt homines transitum facere, vel dum insequitur quis equum vel bovem, et aliquis a bove vel equo percussus fuerit, et hujusmodi, hoc imputatur ei.* That is: But here we are to distinguish whether a man be upon a lawful or unlawful business; if an unlawful, as he that throws a stone into a place where men use to pass; or if he chase a horse or an ox, and thereby the man be stricken by the

Of crimes capital.

horse or the ox; this shall be imputed to him. And it is most reasonable; for the doing of such an unlawful act as is here meant, is a sufficient argument of a felonious purpose, or at least a hope to kill somebody or other, and he cared not whom, which is worse than to design the death of a certain adversary, which nevertheless is murder. Also, on the contrary, though the business a man is doing be lawful, and it chanceth sometimes that a man be slain thereby, yet may such killing be felony. For if a carman drive his cart through Cheapside in a throng of people, and thereby he kill a man, though he bare him no malice, yet because he saw there was very great danger, it may reasonably be inferred, that he meant to adventure the killing of somebody or other, though not of him that was killed.

L. He is a felon also that killeth himself voluntarily, and is called, not only by common lawyers, but also in divers statute laws, *felo de se.*

P. And it is well so; for names imposed by statutes are equivalent to definitions. But I conceive not how any man can bear *animum felleum*, or so much malice towards himself, as to hurt himself voluntarily, much less to kill himself. For naturally and necessarily the intention of every man aimeth at somewhat which is good to himself, and tendeth to his preservation. And therefore, methinks, if he kill himself, it is to be presumed that he is not *compos mentis*, but by some inward torment or apprehension of somewhat worse than death, distracted.

L. Nay, unless he be *compos mentis*, he is not *felo de se*, as Sir Edward Coke saith, 3 *Inst. p.* 54; and therefore he cannot be judged a *felo de se*, unless it be first proved he was *compos mentis.*

Of crimes capital.

P. How can that be proved of a man dead; especially if it cannot be proved by any witness, that a little before his death he spake as other men used to do? This is a hard place; and before you take it for common-law, it had need to be cleared.

L. I will think on it. There is a statute of 3 *Hen. VII, c.* 14, which makes it felony in any of the King's household servants, under the degree of a Lord, to compass the death of any of the King's Privy Council. The words are these: That from henceforth the steward, treasurer, and comptroller of the King's house for the time being, or one of them, have full authority and power, to inquire by twelve staid men and discreet persons of the chequer-roll of the King's honourable household, if any servant, admitted to be his servant sworn, and his name put into the chequer-roll, whatsoever he be, serving in any manner, office, or room, reputed, had, or taken under the estate of a Lord, make any confederacies, compassings, conspiracies, or imaginations with any person, to destroy or murder the King, or any Lord of this realm, or any other person sworn of the King's council, steward, treasurer, or comptroller of the King's house. And if such misdoers shall be found guilty by confession, or otherwise, that the said offence shall be judged felony.

P. It appears by this statute, that not only the compassing the death, as you say, of a privy-councillor, but also of any Lord of this realm, is felony; if it be done by any of the King's household servants, that is not a Lord.

L. No; Sir Edward Coke upon these words, *any Lord of this realm, or other person sworn of the King's council,* infers (3 *Inst. p.* 38), that it is to be

Of crimes capital.

understood of such a Lord only as is a privy-councillor.

P. For barring of the Lords of Parliament from this privilege, he strains this statute a little farther, in my opinion, than it reacheth of itself. But how are such felonies to be tried?

L. The indictment is to be found before the steward, treasurer, and comptroller of the King's house, or one of them, by twelve of the King's household servants. The petit jury for the trial must be twelve other of the King's servants. And the judges are again the steward, treasurer, and comptroller of the King's house, or two of them; and yet I see that these men are not usually great students of the law.

P. You may hereby be assured, that either the King and Parliament were very much overseen in choosing such officers perpetually for the time being to be judges in a trial at the common-law, or else that Sir Edward Coke presumes too much to appropriate all the judicature, both in law and equity, to the common lawyers; as if neither lay persons, men of honour, nor any of the Lords spiritual who are the most versed in the examination of equity and cases of conscience, when they hear the statutes read and pleaded, were fit to judge of the intention and meaning of the same. I know that neither such great persons, nor bishops, have ordinarily so much spare time from their ordinary employment, as to be so skilful as to plead causes at the bar; but certainly they are, especially the bishops, the best able to judge of matters of reason, that is to say (by Sir Edward Coke's confession) of matters, except of blood, at the common-law.

Of crimes capital.

L. Another sort of felony, though without manslaughter, is robbery; and by Sir Edward Coke (3 *Inst. p.* 68), defined thus: Robbery by the common-law is a felony committed by a violent assault upon the person of another, by putting him in fear, and taking away from him his money, or other goods of any value whatsoever.

P. Robbery is not distinguished from theft by any statute. *Latrocinium* comprehendeth them both, and both are felony, and both punished with death. And therefore to distinguish them aright is the work of reason only. And the first difference, which is obvious to all men, is that robbery is committed by force or terror, of which neither is in theft. For theft is a secret act, and that which is taken by violence or terror, either from his person, or in his presence, is still robbery. But if it be taken secretly, whether it be by day or night, from his person, or from his fold, or from his pasture, then it is called theft. It is force and fraud only, that distinguisheth between theft and robbery; both which are, by the pravity only of the intention, felony in their nature. But there be so many evasions of the law found out by evil men, that I know not, in this predicament of felony, how to place them. For suppose I go secretly, by day or night, into another man's field of wheat, ripe and standing, and loading my cart with it I carry it away: is it theft or robbery?

L. Neither, it is but trespass. But if you first lay down the wheat you have cut, and then throw it into your cart, and carry it away, then it is felony.

P. Why so?

L. Sir Edward Coke tells you the reason of it

Of crimes capital.

(3 *Inst. p.* 107). For he defineth theft to be, by the common-law, a felonious and fraudulent taking and carrying away, by any man or woman, of the mere personal goods of another, not from the person, nor by night in the house of the owner. From this definition, he argues thus, p. 109: Any kind of corn or grain, growing upon the ground, is a personal chattel, and the executors of the owner shall have them, though they be not severed; but yet no larceny can be committed of them, because they are annexed to the realty; so it is of grass standing on the ground, or of apples, or of any fruit upon the trees, &c.; so it is of a box or chest of charters, no larceny can be committed of them, because the charters concern the realty, and the box or chest though it be of great value, yet shall it be of the same nature the charters are of; *et omne magis dignum trahit ad se minus.*

P. Is this definition drawn out of any statute, or is it in Bracton or Littleton, or any other writer upon the science of the laws?

L. No, it is his own: and you may observe by the logic sentences dispersed through his works, that he was a logician sufficient enough to make a definition.

P. But if his definitions must be the rule of law, what is there that he may not make felony or not felony, at his pleasure? But seeing it is not statute law that he says, it must be very perfect reason, or else no law at all; and to me it seems so far from reason, as I think it ridiculous. But let us examine it. There can, says he, be no larceny of corn, grass, or fruits that are growing, that is to say, they cannot be stolen. But why? Because they

Of crimes capital.

concern the realty; that is, because they concern the land. It is true, that the land cannot be stolen, nor the right of a man's tenure; but corn, and trees, and fruit, though growing, may be cut down, and carried away secretly and feloniously, in contempt and despite of the law. And are they not then stolen? And is there any act which is feloniously committed, that is not more than trespass? Can any man doubt of it, that understands the English tongue? It is true, that if a man pretend a right to the land, and on that pretence take the fruits thereof by way of taking possession of his own, it is no more than a trespass, unless he conceal the taking of them. For in that one case, he but puts the man that was in possession before, to exhibit his complaint, which purpose is not felonious, but lawful; for nothing makes a distinction between felony and not felony, but the purpose. I have heard, that if a man slander another with stealing of a tree standing, there lies no action for it. And that upon this ground: to steal a standing tree is impossible; and that the cause of the impossibility is, that a man's freehold cannot be stolen; which is a very obvious fallacy. For freehold signifieth, not only the tenement, but also the tenure; and though it be true that a tenure cannot be stolen, yet every man sees that the standing trees and corn may easily be stolen. And so far forth as trees, &c. are part of the freehold, so far forth also, they are personal goods. For whatsoever is freehold is inheritance, and descendeth to the heir, and nothing can descend to the executors but what is merely personal. And though a box or case of evidences are to descend

Of crimes capital.

to the heir, yet unless you can shew me positive law to the contrary, they shall be taken into the executors' hands to be delivered to the heir. Besides, how unconscionable a thing is it, that he that steals a shilling's worth of wood, which the wind hath blown down, or which lieth rotting on the ground, should be hanged for it, and he that takes a tree, worth twenty or forty shillings, should answer only for the damage!

L. It is somewhat hard, but it has been so practised time out of mind. Then follows sodomy, and rape, both of them felonies.

P. I know that, and that of the former he justly says it is detestable, being in a manner an apostacy from human nature: but in neither of them is there anything of *animus felleus*. The statutes which make them felony, are exposed to all men's reading. But because Sir Edward Coke's commentaries upon them are more diligent and accurate than to be free from all uncleanness, let us leap over them both; observing only by the way, that he leaves an evasion for an impotent offender, though his design be the same, and pursued to the utmost of his power.

L. Two other great felonies are, breaking and burning of houses; neither of which are defined by any statute. The former of them is by Sir Edward Coke (3 *Inst. p.* 63), defined thus:—Burglary is by the common-law, the breaking and entering into the mansion-house of another, in the night, with intent to kill some reasonable creature, or to commit some other felony within the same, whether his intent be executed or not. And he defineth night to be then, when one man cannot know another's

face by daylight. And for the parts of a mansion-house, he reckoneth all houses that belong to house-keeping, as barns, stables, dairyhouses, buttery, kitchen, chambers, &c. But breaking of a house by day, though felony, and punished as burglary, is not within the statute. Of crimes capital.

P. I have nothing to say against his interpretations here; but I like not that any private man should presume to determine, whether such or such a fact done be within the words of a statute or not, where it belongs only to a jury of twelve men to declare in their verdict, whether the fact laid open before them, be burglary, robbery, theft, or other felony. For this is to give a leading judgment to the jury, who ought not to consider any private lawyer's institutes, but the statutes themselves pleaded before them for directions.

L. Burning, as he defines it (ibid. p. 66), is a felony at the common-law, committed by any that maliciously and voluntarily, in the night or day, burneth the house of an other. And he hereupon infers, if a man set fire to the house, and it takes not, that then it is not within the statute.

P. If a man should secretly and maliciously lay a quantity of gunpowder under another man's house, sufficient to blow it up, and set a train of powder in it, and set fire to the train, and some accident hinder the effect, is not this burning? Or what is it? What crime? It is neither treason, nor murder, nor burglary, nor robbery, nor theft, nor (no damage being made) any trespass, nor contrary to any statute. And yet, seeing the common-law is the law of reason, it is a sin, and such a sin as a man may be accused of, and convicted; and

Of crimes capital.

consequently a crime committed of malice prepensed. Shall he not then be punished for the attempt? I grant you that a judge has no warrant from any statute-law, common-law, or commission, to appoint the punishment; but surely the King has power to punish him, on this side of life or member, as he please; and with the assent of Parliament, if not without, to make the crime for the future capital.

L. I know not. Besides these crimes, there is conjuration, witchcraft, sorcery and enchantment; which are capital by the statute 1 *James*, *c.* 12.

P. But I desire not to discourse of that subject. For though without doubt there is some great wickedness signified by those crimes; yet I have ever found myself too dull to conceive the nature of them, or how the devil hath power to do many things which witches have been accused of. Let us now come to crimes not capital.

L. Shall we pass over the crime of heresy, which Sir Edward Coke ranketh before murder? But the consideration of it will be somewhat long.

P. Let us defer it till the afternoon.

Of heresy.

L. Concerning heresy, Sir Edward Coke (3 *Inst.* p. 39) says, that five things fall into consideration. 1. Who be the judges of heresy. 2. What shall be judged heresy. 3. What is the judgment upon a man convicted of heresy. 4. What the law alloweth him to save his life. 5. What he shall forfeit by judgment against him.

P. The principal thing to be considered, which is the heresy itself, he leaveth out, viz. what it is; in what fact or words it consisteth; what law it violateth, statute-law or the law of reason. The

cause why he omitteth it, may perhaps be this; that it was not only out of his profession, but also out of his other learning. Murder, robbery, theft, &c. every man knoweth to be evil, and are crimes defined by the statute-law, so that any man may avoid them, if he will. But who can be sure to avoid heresy, (if he but dare to give an account of his faith), unless he know beforehand what it is? Of heresy.

L. In the preamble of the statute of 2 *Hen. IV, c.* 15, heresy is laid down, as a preaching or writing of such doctrine as is contrary to the determination of Holy Church.

P. Then it is heresy at this day to preach or write against worshipping of Saints, or the infallibility of the Church of Rome, or any other determination of the same Church. For Holy Church, at that time, was understood to be the Church of Rome, and now with us the Holy Church I understand to be the Church of England; and the opinions in that statute are now, and were then, the true Christian faith. Also the same statute of *Hen. IV* declareth, by the same preamble, that the Church of England had never been troubled with heresy.

L. But that statute is repealed.

P. Then also is that declaration or definition of heresy repealed.

L. What, say you, is heresy?

P. I say, heresy is a singularity of doctrine or opinion contrary to the doctrine of another man, or men; and the word properly signifies the doctrine of a sect, which doctrine is taken upon trust of some man of reputation for wisdom, that was the first author of the same. If you will understand the

Of heresy.

truth hereof, you are to read the histories and other writings of the ancient Greeks, whose word it is; which writings are extant in these days, and easy to be had. Wherein you will find, that in and a little before the time of Alexander the Great, there lived in Greece many excellent wits, that employed their time in search of the truth in all manner of sciences worthy of their labour, and which to their great honour and applause published their writings; some concerning justice, laws, and government, some concerning good and evil manners, some concerning the causes of things natural and of events discernible by sense, and some of all these subjects. And of the authors of these, the principal were Pythagoras, Plato, Zeno, Epicurus and Aristotle, men of deep and laborious meditation, and such as did not get their bread by their philosophy, but were able to live of their own, and were in honour with princes and other great personages. But these men, though above the rest in wisdom, yet their doctrine in many points did disagree; whereby it came to pass, that such men as studied their writings, inclined some to Pythagoras, some to Plato, some to Aristotle, some to Zeno, and some to Epicurus. But philosophy itself was then so much in fashion, as that every rich man endeavoured to have his children educated in the doctrine of some or other of these philosophers, which were for their wisdom so much renowned. Now those that followed Pythagoras, were called *Pythagoreans;* those that followed Plato, *Academics;* those that followed Zeno, *Stoics;* those that followed Epicurus, *Epicureans;* and those that followed Aristotle, *Peripatetics;* which are the

names of heresy in Greek, which signifies no more but taking of an opinion; and the said *Pythagoreans*, *Academics*, *Stoics*, *Peripatetics*, *&c.* were termed by the names of so many several heresies. All men, you know, are subject to error, and the ways of error very different; and therefore it is no wonder if these wise and diligent searchers of the truth did, notwithstanding their excellent parts, differ in many points amongst themselves. But this laudable custom of great wealthy persons to have their children at any price to learn philosophy, suggested to many idle and needy fellows an easy and compendious way of maintenance; which was to teach the philosophy, some of Plato, some of Aristotle, &c: whose books to that end they read over, but without capacity or much endeavour to examine the reasons of their doctrines, taking only the conclusions, as they lay. And setting up with this, they soon professed themselves philosophers, and got to be the school-masters to the youth of Greece. But by competition for such employment, they hated and reviled one another with all the bitter terms they could invent; and very often, when upon occasion they were in civil company, fell first to disputation, and then to blows, to the great trouble of the company and their own shame. Yet amongst all their reproachful words, the name of *heretic* came never in, because they were all equally heretics, their doctrine not being theirs, but taken upon trust from the aforesaid authors. So that though we find heresy often mentioned in Lucian and other heathen authors, yet we shall not find in any of them *hæreticus* for a heretic. And this disorder among the philosophers continued a

Of heresy.

Of heresy. long time in Greece, and infecting also the Romans, was at the greatest in the times of the apostles and in the primitive Church, till the time of the Nicene Council, and somewhat after. But at last the authority of the Stoics and Epicureans was not much esteemed, only Plato's and Aristotle's philosophy were much in credit; Plato's with the better sort, that founded their doctrine upon the conceptions and ideas of things, and Aristotle's with those that reasoned only from the names of things, according to the scale of the *categories*. Nevertheless, there were always, though not new sects of philosophy, yet new opinions continually arising.

L. But how came the word heretic to be a reproach?

P. Stay a little. After the death of our Saviour, his apostles and his disciples, as you know, dispersed themselves into several parts of the world to preach the Gospel, and converted much people, especially in Asia the Less, in Greece, and Italy, where they constituted many churches; and as they travelled from place to place, left bishops to teach and direct those their converts, and to appoint presbyters under them to assist them therein, and to confirm them by setting forth the life and miracles of our Saviour, as they had received them from the writings of the apostles and evangelists; whereby, and not by the authority of Plato, or Aristotle, or any other philosopher, they were to be instructed. Now you cannot doubt but that among so many heathens converted in the time of the apostles, there were men of all professions and dispositions, and some that had never thought of philosophy at all, but were intent upon their fortunes or their pleasures;

and some that had a greater, some a less use of reason; and some that had studied philosophy, but professed it not, which were commonly the men of the better rank; and some had professed it only for their better abstinence, and had it not farther than readily to talk and wrangle; and some were Christians in good earnest, and others but counterfeit, intending to make use of the charity of those that were sincere Christians, which in those times was very great. Tell me now, of these sorts of Christians, which was the most likely to afford the fittest men to propagate the faith by preaching and writing, or public or private disputation; that is to say, who were fittest to be made presbyters and bishops. Of heresy.

L. Certainly those who, *cæteris paribus*, could make the best use of Aristotle's rhetoric and logic.

P. And who were the most prone to innovation?

L. They that were most confident of Aristotle's and Plato's (their former masters) natural philosophy. For they would be the aptest to wrest the writings of the apostles and all Scriptures to the doctrines in which their reputation was engaged.

P. And from such bishops and priests and other sectaries it was, that heresy, amongst the Christians, first came to be a reproach. For no sooner had one of them preached or published any doctrine that displeased either the most, or the most leading men of the rest, but it became such a quarrel as not to be decided but by a Council of the bishops in the province where they lived; wherein he that would not submit to the general decree, was called a heretic, as one that would not relinquish the philosophy of his sect. The rest of the Council gave themselves the name of Catholics, and to their

Of heresy. Church the name of Catholic Church. And thus came up the opposite terms of catholic and heretic.

L. I understand how it came to be a reproach, but not how it follows that every opinion condemned by a Church that is, or calls itself catholic, must needs be an error or a sin. The Church of England denies that consequence, and that such doctrine as they hold cannot be proved to be erroneous but by the Scripture, which cannot err; but the Church, being but men, may both err and sin.

P. In this case we must consider also that error, in its own nature, is no sin. For it is impossible for a man to err on purpose; he cannot have an intention to err; and nothing is sin unless there be a sinful intention: much less are such errors sins, as neither hurt the commonwealth nor any private man, nor are against any law positive or natural; such errors as were those for which men were burnt, in the time when the Pope had the government of this Church.

L. Since you have told me how heresy came to be a name, tell me also how it came to be a crime; and what were the heresies that first were made crimes.

P. Since the Christian Church could declare, and none else, what doctrines were heresies, but had no power to make statutes for the punishment of heretics before they had a Christian King, it is manifest that heresy could not be made a crime before the first Christian Emperor, which was Constantine the Great. In his time, one Arius, a priest of Alexandria, in dispute with his bishop publicly denied the divinity of Christ, and maintained it afterwards in the pulpit, which was the cause of a sedition and much bloodshed both of citizens and

soldiers in that city. For the preventing of the like for the time to come, the Emperor called a general Council of bishops to the city of Nice; who being met, he exhorted them to agree upon a confession of the Christian faith, promising that whatsoever they agreed on he would cause to be observed. Of heresy.

L. By the way, the Emperor, I think, was here a little too indifferent.

P. In this Council was established so much of the creed we now use and call the Nicene creed, as reacheth to the words, *I believe in the Holy Ghost.* The rest was established by the three general Councils next succeeding. By the words of which creed almost all the heresies then in being, and especially the doctrine of Arius, were condemned; so that now all doctrines published by writing or by word, and repugnant to this confession of the first four general Councils, and contained in the Nicene creed, were, by the imperial law forbidding them, made crimes; such as are that of Arius, denying the divinity of Christ; that of Eutiches, denying the two natures of Christ; that of the Nestorians, denying the divinity of the Holy Ghost; that of the Anthropomorphites, that of the Manichees, that of the Anabaptists, and many other.

L. What punishment had Arius?

P. At the first, for refusing to subscribe, he was deprived and banished; but afterwards having satisfied the Emperor concerning his future obedience (for the Emperor caused this confession to be made, not for the regard of truth of doctrine, but for the preserving of the peace, especially among his Christian soldiers, by whose valour he had gotten the empire, and by the same was

Of heresy.

to preserve it), he was received again into grace, but died before he could repossess his benefice. But after the time of those Councils, the imperial law made the punishment for heresy to be capital, though the manner of the death was left to the prefects in their several jurisdictions; and thus it continued till somewhat after the time of the Emperor Frederick Barbarossa. But the papacy having gotten the upper hand of the Emperor, brought in the use of burning both heretics and apostates; and the Popes from time to time made heresies of many other points of doctrine (as they saw it conduce to the setting up of the chair above the throne), besides those determined in the Nicene creed, and brought in the use of burning; and according to this papal law, there was an apostate burnt at Oxford, in the time of William the Conqueror, for turning Jew. But of a heretic burnt in England, there is no mention made till after the statute of 2 *Hen. IV*, whereby some followers of Wicliff, called Lollards, were afterwards burned; and that for such doctrines as by the Church of England, ever since the first year of Queen Elizabeth, have been approved for godly doc trines, and no doubt were godly then. And so you see how many have been burnt for godliness.

L. It was not well done. But it is no wonder we read of no heretics before the time of Henry IV: for in the preamble to that statute it is intimated, that before those Lollards there never was any heresy in England.

P. I think so too; for we have been the tamest nation to the Pope of all the world. But what statutes concerning heresy have there been made since?

L. The statute of 2 *Hen. V*, *c.* 7, which adds to

the burning the forfeiture of lands and goods; and then no more till the 25 *Hen. VIII*, *c.* 14, which confirms the two former, and giveth some new rules concerning how they shall be proceeded with. But by the statute of 1 *Edw. VI*, *c.* 12, all acts of Parliament formerly made to punish any manner of doctrine concerning religion, are repealed. For therein it is ordained, after divers Acts specified, that all and every other Act or Acts of Parliament concerning doctrine or matters of religion, and all and every branch, article, sentence, and matter, pains and forfeitures contained, mentioned, or anywise declared in the same Acts of Parliament or statutes, shall be from henceforth repealed, utterly void, and of none effect. So that in the time of King Edward VI, not only all punishments of heresy were taken away, but also the nature of it was changed to what originally it was, a private opinion. Again, in 2 *Phil. & M.* those former statutes of 2 *Hen. IV*, *c.* 15, 2 *Hen. V*, *c.* 17, 25 *Hen. VIII*, *c.* 14, are revived; and the branch of 1 *Edw. VI*, *c.* 12, touching doctrine, though not specially named, seemeth to be this, that the same statute confirmeth the statute of 25 *Edw. III*, concerning treasons. Lastly, in the first year of Queen Elizabeth, *c.* 1, the aforesaid statutes of Queen Mary are taken away, and thereby the statute of 1 *Edw. VI*, *c.* 12, revived; so as there was no statute left for the punishment of heretics. But Queen Elizabeth by the advice of her Parliament gave a commission, which was called the High Commission, to certain persons, amongst whom were very many of the bishops, to declare what should be heresy for the future, but with a restraint that they should judge

Of heresy.

Of heresy. nothing to be heresy, but what had been so declared in the first four general Councils.

P. From this which you have showed me, I think we may proceed to the examination of the learned Sir Edward Coke concerning heresy. In his chapter of heresy, 3 *Inst.* p. 40, he himself confesseth that no statute against heresy stood then in force, when in the 9th year of King James, Bartholomew Legat was burnt for Arianism; and that from the authority of the act of 2 *Hen. IV, c.* 15, and other acts cited in the margin, it may be gathered that the diocesan hath the jurisdiction of heresy. This I say is not true: for as to acts of Parliament, it is manifest, that from acts repealed, that is to say, from things that have no being, there can be gathered nothing. And as to the other authorities in the margin, Fitzherbert and the Doctor and Student, they say no more than what was law in the time when they writ; that is, when the Pope's usurped authority was here obeyed. But if they had written this in the time of King Edward VI or Queen Elizabeth, Sir Edward Coke might as well have cited his own authority, as theirs; for their opinions had no more the force of laws than his. Then he cites this precedent of Legat, and another of Hammond in the time of Queen Elizabeth; but precedents prove only what was done, and not what was well done. What jurisdiction could the diocesan then have of heresy, when by the statute of *Edw. VI, c.* 12, then in force, there was no heresy, and all punishment for opinions was forbidden? For heresy is a doctrine contrary to the determination of the Church; but then the Church had not determined any thing at all concerning heresy.

L. But seeing the high-commissioners had power to correct and amend heresies, they must have power to cite such as were accused of heresy to appear before them; or else they could not execute their commission. Of heresy.

P. If they had first made and published a declaration of what articles they made heresy, that when one man heard another speak against their declaration, he might thereof inform the commissioners, then indeed they had had power to cite and imprison the person accused. But before they can know what should be heresy, how was it possible that one man should accuse another? And before he be accused, how can he be cited?

L. Perhaps it was taken for granted, that whatsoever was contrary to any of the four first general Councils, was to be judged heresy.

P. That granted, yet I see not how one man might accuse another any the better for those Councils. For not one man of ten thousand had ever read them, nor were they ever published in English, that a man might avoid offending against them; nor perhaps are they extant. Nor if those that we have printed in Latin, are the very acts of the Councils, which is yet much disputed amongst divines, do I think it fit they were put in the vulgar tongues. But it is not likely that the makers of the statutes had any purpose to make heresy of whatsoever was repugnant to those four general Councils. For if they had, I believe the Anabaptists, of which there was great plenty in those times, would one time or other have been questioned upon this article of the Nicene Creed, *I believe one baptism for the remission of sins.* Nor was the com-

Of heresy.

mission itself for a long time after registered, that men might in such uncertainty take heed and abstain, for their better safety, from speaking of religion anything at all. But by what law was this hereitc Legat burnt? I grant he was an Arian, and his heresy contrary to the determination of the Church of England, in the highest points of Christianity. But seeing there was no statute-law to burn him, and no penalty forbidding, by what law, by what authority was he burnt?

L. That this Legat was accused of heresy, was no fault of the high-commissioners; but when he was accused, it had been a fault in them not to have examined him, or having examined him and found him an Arian, not to have judged him so, or not to have certified him so. All this they did, and this was all that belonged unto them; they meddled not with his burning, but left him to the secular power to do with him what they pleased.

P. Your justification of the commissioners is nothing to the question. The question is by what law was he burnt? The spiritual-law gives no sentence of temporal punishment; and Sir Edward Coke confesseth that he could not be burned; and burning being forbidden by statute-law, by what law then was he burned?

L. By the common-law.

P. What is that? It is not custom. For before the time of Henry IV, there was no such custom in England; for if there had, yet those laws that came after were but confirmations of the custom, and therefore the repealing of those laws was a repealing of the custom. For when King Edward VI and Queen Elizabeth abolished those statutes,

they abolished all pains, and consequently burning, or else they had abolished nothing. And if you will say he was burnt by the law of reason, you must tell me how there can be proportion between doctrine and burning; there can be no equality, nor majority, nor minority assigned between them. The proportion that is between them, is the proportion of the mischief which the doctrine maketh, to the mischief to be inflicted on the doctor; and this is to be measured only by him that hath the charge of governing the people; and consequently the punishing of offences can be determined by none but by the King, and that, if it extend to life or member, with the assent of Parliament. Of heresy.

L. He does not draw any argument for it from reason, but allegeth for it this judgment executed upon Legat, and a story out of Holinshed and Stow. But I know that neither history nor precedent will pass with you for law. And though there be a writ *de hæretico comburendo* in the register, as you may read in Fitzherbert, grounded upon the statutes of 2 *Hen. IV*, *c.* 15, and 2 *Hen. V*, *c.* 7; yet seeing those statutes are void, you will say the writ is also void.

P. Yes, indeed will I. Besides this, I understand not how that it is true that he saith, that the diocesan hath jurisdiction of heresy, and that so it was put in use in all Queen Elizabeth's reign; whereas by the statute it is manifest, that all jurisdiction spiritual was given under the Queen to the high-commissioners. How then could any one diocesan have any part thereof without deputation from them, which by their letters-patent they could not grant? Nor was it reasonable they should; for the trust

Of heresy. was not committed to the bishops only, but also to divers lay persons, who might have an eye upon their proceedings, lest they should encroach upon the power temporal. But at this day there is neither statute nor any law to punish doctrine, but the ordinary power ecclesiastical, and that according to the canons of the Church of England, only authorized by the King, the high-commission being long since abolished. Therefore let us come now to such causes criminal as are not capital.

Of premunire. *L.* The greatest offence not capital, is that which is done against the statute of provisors.

P. You have need to expound this.

L. This crime is not unlike to that for which a man is outlawed, when he will not come in and submit himself to the law; saving that in outlawries there is a long process to precede it, and he that is outlawed is put out of the protection of the law. But for the offence against the statute of provisors (which is called *præmunire facias*, from the words in the original writ), if the offender submit not himself to the law within the space of two months after notice, he is presently an outlaw. And this punishment, if not capital, is equivalent to capital. For he lives secretly at the mercy of those that know where he is, and cannot, without the like peril to themselves, but discover him. And it has been much disputed, before the time of Queen Elizabeth, whether he might not be lawfully killed by any man that would, as one might kill a wolf. It is like the punishment amongst the old Romans, of being barred the use of fire and water; and like the great excommunication in the papacy, when a man might not eat nor drink with the offender without incurring the like penalty.

P. Certainly the offence for which this punishment was first ordained was some abominable crime, or extraordinary mischief. Of premunire.

L. So it was. For the Pope, you know, from long before the Conquest, encroached every day upon the power temporal. Whatsoever could be made to seem to be *in ordine ad spiritualia,* was in every commonwealth claimed and haled to the jurisdiction of the Pope; and for that end, in every country he had his court ecclesiastical, and there was scarce any cause temporal which he could not, by one shift or other, hook into his jurisdiction, in such sort as to have it tried in his own courts at Rome, or in France, or in England itself. By which means the King's laws were not regarded, judgments given in the King's courts were avoided, and presentations to bishoprics, abbeys, and other benefices, founded and endowed by the Kings and nobility of England, were bestowed by the Pope upon strangers, or such as with money in their purses could travel to Rome to provide themselves of such benefices. And suitably hereunto, when there was a question about a tithe, or a will, though the point were merely temporal, yet the Pope's court here would fetch them in, or else one of the parties would appeal to Rome. Against these injuries of the Roman Church, and to maintain the right and dignity of the Crown of England, Edward III made a statute concerning provisors, that is, such as provide themselves with benefices here from Rome. For in the twenty-fifth year of his reign he ordained, in a full Parliament, that the right of election of bishops, and right of advowsons and presentations, belonged to himself, and to the nobility that were the founders

Of præmunire. of such bishoprics, abbeys, and other benefices. And he enacted further, that if any clerk which he or any of his subjects should present, should be disturbed by any such provisor, that such provisor or disturber should be attached by his body, and if convicted, lie in prison till he were ransomed at the King's will, and had satisfied the party grieved, renounced his title, and found sureties not to sue for it any further; and that if they could not be found, then exigents should go forth to outlawry, and the profits of the benefice in the mean time be taken into the King's hands. And the same statute is confirmed in the twenty-seventh year of King Edward III; which statute alloweth to these provisors two months to appear: but if they appear before they be outlawed, they shall be received to make answer; but if they render not themselves, they shall forfeit all their lands, goods, and chattels, besides that they stand outlawed. The same law is confirmed again by 16 *Rich. II, c.* 5; in which is added, because these provisors obtained sometimes from the Pope, that such English bishops, as according to the law were instituted and inducted by the King's presentees, should be excommunicated, that for this also both they, and the receivers and publishers of such papal process, and the procurers, should have the same punishment.

P. Let me see the statute itself of 27 *Edw. III.*

L. It lies there before you, set down *verbatim* by Sir Edward Coke himself, both in English and French.

P. It is well. We are now to consider what it means, and whether it be well or ill interpreted by Sir Edward Coke. And first it appeareth by the

preamble, which Sir Edward Coke acknowledgeth to be the best interpreter of the statute, that this statute was made against the encroachments only of the Church of Rome upon the right of the King, and other patrons, to collate bishoprics and other benefices within the realm of England, and against the power of the courts spiritual to hold plea of controversies determinable in any of the courts of the King, or to reverse any judgment there given, as being things that tend to the disherison of the King and destruction of the common-law of the realm always used. Put the case now, that a man had procured the Pope to reverse a decree in chancery. Had he been within the danger of præmunire? Of præmunire.

L. Yes, certainly. Or if the judgment had been given in the Court of the Lord Admiral, or in any other King's court whatsoever, either of law or equity. For courts of equity are most properly courts of the common-law of England, because equity and common-law, as Sir Edward Coke says, are all one.

P. Then the word common-law is not in this preamble restrained to such courts only where the trial is by juries, but comprehends all the King's temporal courts, if not also the courts of those subjects that are lords of great manors.

L. It is very likely, yet I think it will not by every man be granted.

P. The statute also says, that they who draw men out of the realm in plea, whereof the cognizance pertaineth to the King's court, or of things whereof judgment is given in the King's court, are within the cases of præmunire. But what if one

Of præmunire. man draw another to Lambeth in plea, whereof judgment is already given at Westminster. Is he by this clause involved in a præmunire?

L. Yes. For though it be not out of the realm, yet it is within the meaning of the statute; because the Pope's court, not the King's court, was then perhaps at Lambeth.

P. But in Sir Edward Coke's time the King's court was at Lambeth, and not the Pope's.

L. You know well enough that the spiritual Court has no power to hold pleas of common-law.

P. I do so; but I know not for what cause any simple man, that mistakes his right court, should be out of the King's protection, lose his inheritance and all his goods, personal and real, and if taken, be kept in prison all his life. This statute cannot be by Sir Edward Coke's torture made to say it. Besides, such men are ignorant in what courts they are to seek their remedy; and it is a custom confirmed by perpetual usage, that such ignorant men should be guided by their counsel at law. It is manifest, therefore, that the makers of the statute intended not to prohibit men from suing for their right, neither in the Chancery, nor in the Admiralty, nor in any other court, except the Ecclesiastical courts, which had their jurisdiction from the Church of Rome. Again, where the statute says, "which do sue in any other court, or defeat a judgment in the King's court": what is the meaning of another court? Another court than what? Is it here meant the King's Bench, or Court of Common Pleas? Does a præmunire lie for every man that sues in Chancery for that which might be remedied in the Court of Common Pleas? Or can

a præmunire lie by this statute against the Lord Chancellor? The statute lays it only on the party that sueth, not upon the judge which holdeth the plea. Nor could it be laid, either by this statute or by the statute of 16 *Rich. II,* upon the judges, which were then punishable only by the Pope's authority. Seeing then the party suing has a just excuse upon the counsel of his lawyer, and the temporal judge and the lawyer both are out of the statute, the punishment of the præmunire can light upon nobody. Of præmunire.

L. But Sir Edward Coke in this same chapter bringeth two precedents to prove, that though the spiritual courts in England be now the King's courts, yet whosoever sueth in them for any thing triable by the common-law, shall fall into a præmunire. One is, that whereas in the twenty-second year of *Hen. VIII* all the clergy of England in a convocation by public instrument acknowledged the King to be supreme head of the Church of England; yet after this, viz. 24 *Hen. VIII,* this statute was in force.

P. Why not? A convocation of the clergy could not alter the right of supremacy; their courts were still the Pope's courts. The other precedent, in the twenty-fifth year of *Hen. VIII*, of the Bishop of Norwich, may have the same answer. For the King was not declared head of the Church by Act of Parliament till the twenty-sixth year of his reign. If he had not mistrusted his own law, he would not have laid hold on so weak a proof as these precedents. And as to the sentence of præmunire upon the Bishop of Norwich, neither doth this statute nor that other of Richard II warrant it. He was sentenced for threatening to excommunicate a man

Of præmunire. which had sued another before the mayor. But this statute forbids not that, but forbids the bringing in or publishing of excommunications, or other process from Rome, or any other place. Before the twenty-sixth year of Henry VIII, there is no question but that for a suit in the spiritual court here in a temporal cause there lay a præmunire. And if perhaps some judge or other hath since that time judged otherwise, his judgment was erroneous.

L. Nay, but by the statute of 16 *Rich. II. c.* 5, it appeareth to the contrary, as Sir Edward Coke here will show you. The effect, saith he, of the statute of Richard II is, that if any pursue, or cause to be pursued, in the Court of Rome or elsewhere, anything which toucheth the King, against him, his crown, or regality, or his realm, they, their notaries, &c. shall be out of the King's protection.

P. I pray you let me know the very words of the statute as they lie.

L. Presently. The words are, *If any man purchase or pursue, or cause to be purchased or pursued, in the Court of Rome or elsewhere, any such translations, processes and sentences of excommunication, bulls, instruments, or any other things whatsoever, which touch the King, against him, his crown, and his regality, or his realm, as is aforesaid, &c.*

P. If a man bring a plea of common-law into the spiritual court, which is now the King's court, and the judge of this spiritual court hold plea thereof: by what construction can you draw it within the compass of the words you have now read? To sue for my right in the King's court, is no pursuing of translations of bishoprics, made

or procured in the Court of Rome, or any place else, but only in the court of the King; nor is this the suit against the King, nor his crown, nor his regality, nor his realm, but the contrary. Why then is it a præmunire? No. He that brings in or setteth out a writing in any place whatsoever, wherein is contained, that the King hath so given away his jurisdiction, as that if a subject be condemned falsely, his submission to the King's judgment is of none effect; or that the King upon no necessity whatsoever can out of Parliament-time raise money for the defence of the kingdom, is, in my opinion, much more within the statute of provisors, than they which begin suit for a temporal matter in a court spiritual. But what argument has he for this law of his, since the statute-law fails him, from the law of reason? Of præmunire.

L. He says, *they are called other courts, either because they proceed by the rules of other laws, as by the canon or civil law, or by other trials than the common-law doth warrant. For the trial warranted by the law of England for matter of fact, is by verdict of twelve men before the judges of the common-law, in matters pertaining to the common-law, and not upon examination of witnesses, as in the Court of Equity. So that alia curia is either that which is governed per aliam legem, or which draweth the party ad aliud examen. For if—*

P. Stop there. Let us consider of this you have read: *for the trial warranted by the law of England is by verdict of twelve men.* What means he here by the law of England? Does it not warrant the trials in Chancery, and in the Court of Admiralty, by witnesses?

Of præmunire.

L. By the law of England he means the law used in the King's Bench; that is to say, the common-law.

P. This is just as if he had said, that two courts did warrant their own way of trial; but other courts not so, but were warranted by the King: only the courts of common-law were warrants to themselves. You see that *alia curia* is this way ill expounded. In the courts of common-law all trials are by twelve men, who are judges of the fact; and the fact known and proved, the judges are to pronounce the law; but in the spiritual court, the Admiralty, and in all the courts of Equity, there is but one judge, both of fact and of law; this is all the difference. If this difference be intended by the statute by *alia curia*, there would be a præmunire for suing in a court, being not the King's Court. The King's Bench and Court of Common Pleas may also be different kinds of courts, because the process is different. But it is plain that this statute doth not distinguish courts otherwise than into the courts of the King, and into the courts of the foreign states and princes. And seeing you stand upon the name of a jury for the distinguishing of courts, what difference do you find between the trials at the common-law, and the trials in other courts? You know that in trials of fact naturally, and through all the world, the witnesses are judges, and it is impossible to be otherwise. What then in England can a jury judge of, except it be of the sufficiency of the testimony? The justices have nothing to judge of or do, but after the fact is proved, to declare the law; which is not judgment, but jurisdiction. Again, though

the trial be in Chancery, or in the Court of civil law, the witnesses are still judges of the fact, and he that hath the commission to hear the cause, hath both the parts, that is to say, of a jury to judge of the testimony, and of a justice to declare the law. In this, I say, lies all the difference: which is indeed enough to make a dispute (as the world goes) about jurisdiction! But seeing it tends neither to the disherison of the King, nor of the people, nor to the subversion of the law of reason, that is of common-law, nor to the subversion of justice, nor to any harm of the realm, without some of which these statutes are not broken; it cannot be a præmunire. Of præmunire.

L. Let me read on. *For if the freehold, inheritances, goods and chattels, debts and duties, wherein the King and subject have right and property by the common-law, should be judged per aliam legem, or be drawn ad aliud examen, the three mischiefs afore expressed would follow; viz. the destruction of the King and his crown, the disherison of his people, and the undoing and destruction of the common-law always used.*

P. That is to say, of the law of reason. From hence it follows, that where there are no juries, and where there are different laws from ours, that is to say, in all the world besides, neither King nor people have any inheritance, nor goods, nor any law of reason. I will examine his doctrine concerning cases criminal no further. He nowhere defineth a crime, that we may know what it is: an odious name sufficeth him to make a crime of any thing. He hath put heresy among the most odious crimes, not knowing what it signifies; and

Of præmunire. upon no other cause, but because the Church of Rome, to make their usurped power the more terrible, had made it, by long preaching against it, and cruelty shown towards many godly and learned men of this and other reformed Churches, appear to common people a thing detestable. He puts it in as a plea of the crown in the time of Queen Elizabeth; whereas in her time there was no doctrine heresy. But Justice Stamford leaves it out, because, when heresy was a crime, it was a plea of the *mitre*. I see also in this catalogue of causes criminal, he inserteth costly feeding, costly apparel, and costly building, though they were contrary to no statute. It is true, that by evil circumstances they become sins; but these sins belong to the judgment of the pastors spiritual. A justice of the temporal law (seeing the intention only makes them sins) cannot judge whether they be sins or no, unless he have power to take confessions. Also he makes flattery of the King to be a crime. How could he know when one man had flattered another? He meant therefore that it was a crime to please the King: and accordingly he citeth divers calamities of such as had been in times past in great favour of the Kings they served; as the favourites of Henry III, Edward II, Richard II, Henry VI; which favourites were some imprisoned, some banished, and some put to death by the same rebels that imprisoned, banished, and put to death the same King, upon no better ground than the Earl of Strafford, the Archbishop of Canterbury, and King Charles the First, by the rebels of that time. Empson and Dudley were no favourites of Henry the seventh, but spunges, which King Henry the

eighth did well squeeze. Cardinal Wolsey was indeed for divers years a favourite of Henry the eighth, but fell into disgrace, not for flattering the King, but for not flattering him in the business of divorce from Queen Katherine. You see his reasoning here; see also his passion in the words following: we will for some causes descend no lower: *Qui eorum vestigiis insistunt, eorum exitus perhorrescant.* This is put in for the favourite, that then was, of King James. But let us give over this, and speak of the legal punishments to these crimes belonging. Of præmunire.

And in the first place I desire to know who it is that hath the power, for an offence committed, to define and appoint the special manner of punishment. For I suppose you are not of the opinion of the Stoics in old time, that all faults are equal, and that there ought to be the same punishment for killing a man, and for killing a hen. Of punishments.

L. The manner of punishment in all crimes whatsoever, is to be determined by the common-law. That is to say, if it be a statute that determines it, then the judgment must be according to the statute; if it be not specified by the statute, then the custom in such cases is to be followed: but if the case be new, I know not why the judge may not determine it according to reason.

P. But according to whose reason? If you mean the natural reason of this or that judge authorized by the King to have cognizance of the cause, there being as many several reasons, as there are several men, the punishment of all crimes will be uncertain, and none of them ever grow up to make a custom. Therefore a punishment certain can never be as-

Of punishments. signed, if it have its beginning from the natural reasons of deputed judges; no, nor from the natural reason of the supreme judge. For if the law of reason did determine punishments, then for the same offences there should be, through all the world and in all times, the same punishments; because the law of reason is immutable and eternal.

L. If the natural reason neither of the King, nor of any else, be able to prescribe a punishment, how can there be any lawful punishment at all?

P. Why not? For I think that in this very difference between the rational faculties of particular men, lieth the true and perfect reason that maketh every punishment certain. For, but give the authority of defining punishments to any man whatsoever, and let that man define them, and right reason has defined them, suppose the definition be both made, and made known before the offence committed. For such authority is to trump in card playing, save that in matter of government, when nothing else is turned up, clubs are trumps. Therefore seeing every man knoweth by his own reason what actions are against the law of reason, and knoweth what punishments are by this authority for every evil action ordained; it is manifest reason, that for breaking the known laws he should suffer the known punishments. Now the person to whom this authority of defining punishments is given, can be no other, in any place of the world, but the same person that hath the sovereign power, be it one man or one assembly of men. For it were in vain to give it to any person that had not the power of the militia to cause it to be executed; for no less power can do it, when many offenders

be united and combined to defend one another. Of punishments.
There was a case put to King David by Nathan, of a rich man that had many sheep, and of a poor man that had but one, which was a tame lamb: the rich man had a stranger in his house, for whose entertainment, to spare his own sheep he took away the poor man's lamb. Upon this case the King gave judgment, "Surely the man that hath done this shall die." What think you of this? Was it a royal, or tyrannical judgment?

L. I will not contradict the canons of the Church of England, which acknowledge the King of England within his own dominions hath the same rights, which the good Kings of Israel had in theirs; nor deny King David to have been one of those good Kings. But to punish with death without a precedent law, will seem but a harsh proceeding with us, who unwillingly hear of arbitrary laws, much less of arbitrary punishments, unless we were sure that all our Kings would be as good as David. I will only ask you, by what authority the clergy may take upon them to determine or make a canon concerning the power of their own King, or to distinguish between the right of a good and an evil King.

P. It is not the clergy that make their canons to be law, but it is the King that doth it by the great seal of England; and it is the King that giveth them power to teach their doctrines, in that, that he authorized them publicly to teach and preach the doctrine of Christ and his apostles, according to the Scriptures, wherein this doctrine is perspicuously contained. But if they had derogated from the royal power in any of their doctrines published,

Of punishments. then certainly they had been to blame; nay, I believe that they had been more within the statute of præmunire of 16 *Rich. II, c.* 5, than any judge of a Court of Equity for holding pleas of common-law. I cite not this precedent of King David, as approving the breach of the great charter, or justifying the punishment with loss of life or member, of every man that shall offend the King; but to show you that before the charter was granted, in all cases where the punishments were not prescribed, it was the King only that could prescribe them; and that no deputed judge could punish an offender but by force of some statute, or by the words of some commission, and not *ex officio*. They might for a contempt of their courts, because it is a contempt of the King, imprison a man during the King's pleasure, or fine him to the King according to the greatness of the offence: but all this amounteth to no more, than to leave him to the King's judgment. As for cutting off of ears, and for the pillory, and the like corporal punishments usually inflicted heretofore in the Star-chamber, they were warranted by the statute of *Hen. VII*, that giveth them power to punish sometimes by discretion. And generally it is a rule of reason, that every judge of crimes, in case the positive law appoint no punishment, and he have no other command from the King, then do consult the King before he pronounce sentence of any irreparable damage on the offender: for otherwise he doth not pronounce the law, which is his office to do, but makes the law, which is the office of the King. And from this you may collect, that the custom of punishing such and such a crime, in such and such a manner, hath not the force of

law in itself, but from an assured presumption that the original of the custom was the judgment of some former King. And for this cause the judges ought not to run up, for the customs by which they are warranted, to the time of the Saxon Kings, nor to the time of the Conquest. For the most immediate antecedent precedents are the fairest warrants of their judgments; as the most recent laws have commonly the greatest vigour, as being fresh in the memory of all men, and tacitly confirmed, because not disapproved, by the sovereign legislator. What can be said against this? Of punishments.

L. Sir Edward Coke, (3 *Inst. p.* 210), in the chapter of judgments and executions, saith, that of judgments some are by the common-law, some by statute-law, and some by custom; wherein he distinguisheth common-law both from statute-law and from custom.

P. But you know, that in other places he makes the common-law, and the law of reason, to be all one; as indeed they are, when by it is meant the King's reason. And then his meaning in this distinction must be, that there be judgments by reason without statute-law, and judgments neither by statute-law nor by reason, but by custom without reason. For if a custom be reasonable, then, both he and other learned lawyers say, it is common-law; and if unreasonable, no law at all.

L. I believe Sir Edward Coke's meaning was no other than yours in this point, but that he inserted the word *custom*, because there be not many that can distinguish between customs reasonable and unreasonable.

P. But custom, so far forth as it hath the force

Of punishments. of a law, hath more of the nature of a statute, than of the law of reason, especially where the question is not of lands and goods, but of punishments, which are to be defined only by authority. Now to come to particulars, what punishment is due by law for high-treason?

L. To be drawn upon a hurdle from the prison to the gallows, and there to be hanged by the neck, and laid upon the ground alive, and have his bowels taken out and burnt whilst he is yet living; to have his head cut off, his body to be divided into four parts, and his head and quarters to be placed as the King shall assign.

P. Seeing a judge ought to give judgment according to the law, and that this judgment is not appointed by any statute, how does Sir Edward Coke warrant it by reason, or how by custom?

L. Only thus: reason it is, that his body, lands, goods, posterity, &c. should be torn, pulled asunder, and destroyed, that intended to destroy the majesty of government.

P. See how he avoids the saying the majesty of the King. But does not this reason make as much for punishing a traitor, as Mettius Fuffetius in old time was executed by Tullus Hostilius, King of Rome, or as Ravaillac, not many years ago in France, who were torn in pieces by four horses, as it does for drawing, hanging, and quartering?

L. I think it does. But he confirms it also in the same chapter, by holy Scripture. Thus Joab for treason (1 *Kings* ii. 28), was drawn from the horns of the altar; that is proof for drawing upon a hurdle: *Esth.* ii. 22; Bigthan for treason was hanged; there is proof for hanging: *Acts* i. 18; Judas

hanged himself and his bowels were poured out; there is for hanging and embowelling alive: 2 *Sam.* xviii. 14; Joab pierced Absalom's heart; that is proof for pulling out a traitor's heart: 2 *Sam.* xx. 22; Sheba the son of Bichri had his head cut off; which is proof that a traitor's head ought to be cut off: 2 *Sam.* iv. 12; they slew Baanah and Rechab, and hung up their heads over the pool of Hebron; this is for setting up of quarters: and lastly for forfeiture of lands, and goods, *Psalms* cix. 9-15: *Let their children be driven out, and beg, and other men make spoil of their labours, and let their memory be blotted out of the land.* Of punishments.

P. Learnedly said; and no record is to be kept of the judgment. Also the punishments divided between those traitors, must be joined in one judgment for a traitor here.

L. He meant none of this, but intended (his hand being in) to show his reading, or his chaplain's, in the Bible.

P. Seeing then for the specifying of the punishment in case of treason, he brings no argument from natural reason, that is to say, from the common-law; and that it is manifest that it is not the general custom of the land, the same being rarely or never executed upon any peer of the realm, and that the King may remit the whole penalty, if he will: it follows, that the specifying of the punishment depends merely upon the authority of the King. But this is certain, that no judge ought to give other judgment, than has been usually given and approved either by a statute, or by consent express or implied of the sovereign power. For otherwise it is not the judgment of the law, but of a man subject to the law.

Of punishments.

L. In petit treason the judgment is, to be drawn to the place of execution, and hanged by the neck; or if it be a woman, to be drawn and burnt.

P. Can you imagine that this so nice a distinction can have any other foundation than the wit of a private man?

L. Sir Edward Coke upon this place says, that she ought not to be beheaded or hanged.

P. No, not by the judge, who ought to give no other judgment than the statute or the King appoints; nor the sheriff to make other execution than the judge pronounceth; unless he have a special warrant from the King. And this I should have thought he had meant, had he not said before, that the King had given away all his right of judicature to his courts of justice.

L. The judgment for felony is—

P. Heresy is before felony in the catalogue of the pleas of the Crown.

L. He has omitted the judgment against a heretic, because, I think, no jury can find heresy, nor no judge temporal did ever pronounce judgment upon it. For the statute of 2 *Hen. V, c.* 7, was, that the bishop having convicted any man of heresy, should deliver him to the sheriff, and that the sheriff should believe the bishop. The sheriff therefore was bound by the statute of 2 *Hen. IV*, after he was delivered to him, to burn him; but that statute being repealed, the sheriff could not burn him, without a writ *de heretico comburendo*, and therefore the sheriff burnt Legat (9 King James) by that writ, which was granted by the judges of the common-law at that time, and in that writ the judgment is expressed.

P. This is strange reasoning. When Sir Edward Coke knew and confessed, that the statutes upon which the writ *de hæretico comburendo* was grounded, were all repealed, how could he think the writ itself could be in force? Or that the statute, which repealeth the statutes for burning heretics, was not made with an intent to forbid such burning? It is manifest he understood not his books of common-law. For in the time of Henry IV and Henry V, the word of the bishop was the sheriff's warrant, and there was need of no such writ; no could be till the 25 *Hen. VIII*, when those statutes were repealed, and a writ made for that purpose and put into the register, which writ Fitzherbert cites in the end of his *Natura Brevium*. Again, in the latter end of the reign of Queen Elizabeth, was published a correct register of original and judicial writs, and the writ *de hæretico comburendo* left out; because that statute of 25 *Hen. VIII*, and all statutes against heretics, were repealed, and burning forbidden. And whereas he citeth for the granting of this writ, in the ninth year of James I, the Lord Chief Justice, the Lord Chief Baron, and two Justices of the Common-Pleas, it is, as to all but the Lord Chief Justice, against the law. For neither the judges of Common-Pleas, nor of the Exchequer, can hold pleas of the Crown without special commission; and if they cannot hold plea, they cannot condemn. Of punishments.

L. The punishment for felony is, that the felon be hanged by the neck till he be dead. And to prove that it ought to be so, he cites a sentence, from whence I know not, *Quod non licet felonem pro felonia decollare.*

Of punishments.

P. It is not indeed lawful for the sheriff of his own head to do it, or to do otherwise than is commanded in the judgment, nor for the judge to give any other judgment than according to statute-law, or the usage consented to by the King; but this hinders not the King from altering his law concerning judgments, if he see good cause.

L. The King may do so, if he please: and Sir Edward Coke tells you how he altered particular judgments in case of felony, and showeth that judgment being given upon a lord in Parliament, that he should be hanged, he was nevertheless beheaded; and that another lord had the like judgment for another felony, and was not hanged but beheaded: and withal he shows you the inconveniency of such proceeding, because, saith he, if hanging might be altered to beheading, by the same reason it might be altered to burning, stoning to death, &c.

P. Perhaps there might be inconveniency in it; but it is more than I see, or he shows, nor did there happen any inconveniency from the execution he citeth: besides he granteth, that death, being *ultimum supplicium*, is a satisfaction to the law. But what is all this to the purpose, when it belongeth not to consider such inconveniences of government but to the King and Parliament? Or who, from the authority of a deputed judge, can derive a power to censure the actions of a King that hath deputed him?

L. For the death of a man by misfortune, there is, he saith, no express judgment, nor for killing a man in one's own defence; but he saith, that the law hath in both cases given judgment that he, that so killeth a man, shall forfeit all his goods and chattels, debts and duties.

P. If we consider what Sir Edward Coke saith (1 *Inst. sec.* 745), at the word *felony*, these judgments are very favourable; for there he saith, that killing a man by *chance medley*, or *se defendendo*, is *felony*. His words are: "wherefore by the law at this day, under the word *felony* in commissions, &c. is included petite treason, murder, homicide, burning of houses, burglary, robbery, rape, &c. *chance-medley*, and *se defendendo*." But if we consider only the intent of him that killeth a man by misfortune or in his own defence, the same judgments will be thought both cruel and sinful judgments. And how they can be *felony*, at this day cannot be understood, unless there be a statute to make them so. For the statute of 25 *Hen. III*, *c.* 25, the words whereof, "murder from henceforth shall not be judged before our justices, where it is found misfortune only, but it shall take place in such as are slain by felony, and not otherwise," make it manifest, if they be felonies, they must also be murders, unless they have been made felonies by some later statute. Of punishments.

L. There is no such later statute, nor is it to say in commission; nor can a commission, or anything but another statute, make a thing felony that was not so before.

P. See what it is for a man to distinguish *felony* into several sorts, before he understands the general name of felony, what it meaneth. But that a man, for killing another man by misfortune only, without any evil purpose, should forfeit all his goods and chattels, debts and duties, is a very hard judgment, unless perhaps they were to be given to the kindred of the man slain, by way of amends for damage.

Of punishments. But the law is not that. Is it the common-law, which is the law of reason, that justifies this judgment, or the statute-law? It cannot be called the law of reason, if the case be mere misfortune. If a man be upon his appletree to gather his apples, and by ill-fortune fall down, and lighting on the head of another man, kill him, and by good fortune save himself; shall he for this mischance be punished with the forfeiture of his goods to the King? Does the law of reason warrant this? He should, you will say, have looked to his feet; that is true; but so should he, that was under, have looked up to the tree. Therefore in this case the law of reason, as I think, dictates that they ought each of them to bear his own misfortune.

L. In this case I agree with you.

P. But this case is the true case of mere misfortune, and a sufficient reprehension of the opinion of Sir Edward Coke.

L. But what if this had happened to be done by one, that had been stealing apples upon the tree of another man? Then, as Sir Edward Coke says (3 *Inst. p.* 56), it had been murder.

P. There is indeed great need of good distinction in a case of killing by misfortune. But in this case the unlawfulness of stealing apples cannot make it murder, unless the falling itself be unlawful. It must be a voluntary unlawful act that causeth the death, or else it is no murder by the law of reason. Now the death of the man that was under the tree, proceeded not from that, that the apples were not his that fell, but from the fall. But if a man shoot with a bow or a gun at another man's deer, and by misfortune kill a man, such

shooting being both voluntary and unlawful, and also the immediate cause of the man's death, may be drawn, perhaps well enough sometimes, to murder by a judge of the common-law. So likewise if a man shoot an arrow over a house, and by chance kill a man in the street, there is no doubt but by the law of reason it is murder: for though he meant no malice to the man slain, yet it is manifest that he cared not whom he slew. In this difficulty of finding out what it is that the law of reason dictates, who is it that must decide the question? Of punishments.

L. In the case of misfortune, I think it belongs to the jury; for it is matter of fact only. But when it is doubtful whether the action from which the misfortune came, were lawful or unlawful, it is to be judged by the judge.

P. But if the unlawfulness of the action, as the stealing of the apples, did not cause the death of the man; then the stealing, be it trespass or felony, ought to be punished alone, as the law requireth.

L. But for the killing of a man *se defendendo*, the jury, as Sir Edward Coke here says, shall not in their verdict say it was *se defendendo*, but shall declare the manner of the fact in special, and clear it to the judge to consider how it is to be called, whether *se defendendo*, manslaughter, or murder.

P. One would think so; for it is not often within the capacity of a jury, to distinguish the signification of the different hard names which are given by lawyers to the killing of a man: as murder and felony, which neither the laws, nor the makers of the laws, have yet defined. The witnesses say, that thus and thus the person did, but not that it was murder or felony; no more can the

Of punishments.

jury say, who ought to say nothing but what they hear from the witnesses or from the prisoner. Nor ought the judge to ground his sentence upon anything else besides the special matter found, which, according as it is contrary or not contrary to the statute, ought to be pronounced.

L. But I have told you, that when the jury has found misfortune or *se defendendo*, there is no judgment at all to be given, and the party is to be pardoned of course, saving that he shall forfeit his goods and chattels, debts and duties, to the King.

P. But I understand not how there can be a crime for which there is no judgment, nor how any punishment can be inflicted without a precedent judgment, nor upon what ground the sheriff can seize the goods of any man, till it be judged that they be forfeited. I know that Sir Edward Coke saith, that in the judgment of hanging, the judgment of forfeiture is implied, which I understand not; though I understand well enough, that the sheriff by his office may seize the goods of a felon convicted; much less do I conceive how the forfeiture of goods can be implied in a no-judgment; nor do I conceive, that when the jury has found the special manner of the fact to be such as is really no other than *se defendendo*, and consequently no fault at all, why he should have any punishment at all. Can you show me any reason for it?

L. The reason lies in the custom.

P. You know that unreasonable customs are not law, but ought to be abolished; and what custom is there more unreasonable, than that a man should be punished without a fault?

L. Then see the statute of 24 *Hen. VIII, c.* 5.

P. I find here, that at the making of this statute there was a question amongst the lawyers, in case one man should kill another, that attempted feloniously to rob or murder him in or near any common highway, courtway, horseway, or footway, or in his mansion, messuage, or dwelling place; whether for the death of such a man one shall forfeit his goods and chattels, as a man should do for killing another by chance medley or in his own defence. This is the preamble, and penned as well as Sir Edward Coke could have wished. But this statute does not determine that a man should forfeit his goods for killing a man *se defendendo*, or for killing him by misfortune; but supposeth it only upon the opinion of the lawyers that then were. The body of the statute is, that if a man be indicted or appealed for the death of such person so attempting as aforesaid, and the same by verdict be so found and tried, he shall not forfeit anything, but shall be discharged as if he had been found not guilty. You see the statute; now consider thereby, in the case of killing *se defendendo*. First, if a man kill another in his own defence, it is manifest that the man slain did either attempt to rob, or to kill, or to wound him; for else it were not done in his own defence. If then it were done in the street, or near the street, as in a tavern, he forfeits nothing, because the street is a highway. So likewise it is to be said of all other common-ways. In what place therefore can a man kill another in his own defence, but that this statute will discharge him of the forfeiture?

Of punishments.

L. But the statute says the attempt must be felonious.

P. When a man assaults me with a knife, sword,

Of punishments.

club, or other mortal weapon, does any law forbid me to defend myself, or command me to stay so long as to know whether he have a felonious intent, or no? Therefore by this statute, in case it be found *se defendendo*, the forfeiture is discharged; if it be found otherwise, it is capital. If we read the statute of *Glocester*, *cap.* 9, I think it will take away the difficulty. For by that statute, in case it be found by the country that he did it in his own defence or by misfortune, then by the report of the justices to the King, the King shall take him to his grace, if it please him. From whence it followeth, first, that it was then thought law, that the jury may give the general verdict of *se defendendo*; which Sir Edward Coke denies. Secondly, that the judge ought to report especial matter to the King. Thirdly, that the King may take him to his grace, if he please; and consequently, that his goods are not to be seized, till the King, after the report of the judge heard, give the sheriff command to do it. Fourthly, that the general verdict of the King hinders not the King but that he may judge of it upon the special matter; for it often happens that an ill-disposed person provokes a man with words or otherwise, on purpose to make him draw his sword, that he may kill him, and pretend it done in his own defence; which appearing, the King may, without any offence to God, punish him, as the cause shall require. Lastly, contrary to the doctrine of Sir Edward Coke, he may in his own person be judge in the case, and annul the verdict of the jury; which a deputed judge cannot do.

L. There be some cases wherein a man, though by the jury he be found not guilty, shall neverthe-

less forfeit his goods and chattels to the King. For example; a man is slain, and one A, hating B, giveth out that it was B that slew him; B hearing thereof, fearing if he be tried for it, that through the great power of A, and others that seek his hurt, he should be condemned, flieth, and afterwards is taken and tried; and upon sufficient evidence is by the jury found not guilty; yet because he fled, he shall forfeit his goods and chattels, notwithstanding there be no such judgment given by the judge, nor appointed by any statute; but the law itself authoriseth the sheriff to seize them to the use of the King. Of punishments.

P. I see no reason (which is common-law) for it, and am sure it is grounded upon no statute.

L. See Sir Edward Coke, 1 *Inst. s.* 709, and read.

P. "If a man that is innocent be accused of felony, and for fear flieth for the same; albeit that he be judicially acquitted of the felony, yet if it be found that he fled for the same, he shall, notwithstanding his innocence, forfeit all his goods and chattels, debts and duties." O unchristian and abominable doctrine! which also he in his own words following contradicteth: "for," saith he, "as to the forfeiture of them, the law will admit no proof against the presumption of the law grounded upon his flight, and so it is in many other cases: but that the general rule is, *Quod stabitur præsumptioni, donec probetur in contrarium;* but you see it hath many exceptions." This general rule contradicts what he said before; for there can be no exceptions to a general rule in law, that is not expressly made an exception by some statute, and to a general rule of equity there can be no exception at all.

Of pardoning.

From the power of punishing, let us proceed to the power of pardoning.

L. Touching the power of pardoning, Sir Edward Coke says, (3. *Inst. p.* 236), that no man shall obtain charter of pardon out of Parliament; and cites for it the statute of 2 *Edw. III, c.* 2; and says further, that accordingly in a Parliament roll it is said, that for the peace of the land it would help that no pardon were granted but by Parliament.

P. What lawful power would he have left to the King, that thus disableth him to practise mercy? In the statute which he citeth, to prove that the King ought not to grant charters of pardon but in Parliament, there are no such words, as any man may see; for that statute is in print; and that which he says is in the Parliament roll, is but a wish of he tells not whom, and not a law; and it is strange that a private wish should be enrolled among acts of Parliament. If a man do you an injury, to whom, think you, belongeth the right of pardoning it?

L. Doubtless to me alone, if to me alone be done that injury; and to the King alone, if to him alone be done the injury; and to both together, if the injury be done to both.

P. What part then has any man in the granting of a pardon, but the King and the party wronged. If you offend no member of either House, why should you ask their pardon? It is possible that a man may deserve a pardon; or he may be such a one sometimes as the defence of the kingdom hath need of. May not the King pardon him, though there be no Parliament then sitting? Sir Edward Coke's law is too general in this point; and I believe, if he

had thought on it, he would have excepted some persons, if not all the King's children and his heir-apparent; and yet they are all his subjects, and subject to the law as other men. Of pardoning

L. But if the King shall grant pardons of murder and felony of his own head, there would be very little safety for any man, either out of his house or in it, either by night or by day. And for that very cause there have been many good statutes provided, which forbid the justices to allow of such pardons as do not specially name the crime.

P. Those statutes, I confess, are reasonable, and very profitable, which forbid the judge to pardon murders. But what statute is there that forbids the King to do it? There is a statute of 13 *Rich. II*, *c.* 1, wherein the King promiseth not to pardon murder; but there is in it a clause for the saving of the King's regality. From which may be inferred that the King did not grant away that power, when he thought good to use it for the commonwealth. Such statutes are not laws to the King, but to his judges, and though the judges be commanded by the King not to allow pardons in many cases, yet if the King by writing command the judges to allow them, they ought to do it. I think, if the King think in his conscience it be for the good of the commonwealth, he sinneth not in it: but I hold not that the King may pardon him without sin, if any other man be damnified by the crime committed, unless he cause reparation to be made as far as the party offending can do it. And howsoever, be it sin or not sin, there is no power in England that may resist him or speak evil of him lawfully.

Of pardoning.

L. Sir Edward Coke denies not that; and upon that ground it is that the King, he says, may pardon high-treason; for there can be no high-treason but against the King.

P. That is well; therefore he confesseth, that whatsoever the offence be, the King may pardon so much of it as is an injury to himself, and that by his own right, without breach of any law positive or natural, or of any grant, if his conscience tell him that it be not to the damage of the commonwealth; and you know that to judge of what is good or evil to the commonwealth, belongeth to the King only. Now tell me, what it is which is said to be pardoned?

L. What can it be, but only the offence? If a man hath done a murder, and be pardoned for the same, is it not the murder that is pardoned?

P. Nay, by your favour, if a man be pardoned for murder or any other offence, it is the man that is pardoned; the murder still remains murder. But what is pardon?

L. Pardon, as Sir Edward Coke says, (3 *Inst.* *p.* 233), is derived of *per* and *dono*, and signifies thoroughly to remit.

P. If the King remit the murder, and pardon not the man that did it, what does the remission serve for?

L. You know well enough that when we say a murder, or any thing else, is pardoned, all Englishmen understand thereby, that the punishment due to the offence is the thing remitted.

P. But for our understanding of one another, you ought to have said so at first. I understand now, that to pardon murder or felony is thoroughly

to save the offender from all the punishment due unto him by the law for his offence. Of pardoning.

L. Not so; for Sir Edward Coke in the same chapter, p. 238, saith thus: "a man commits felony, and is attainted thereof, or is abjured; the King pardoneth the felony without any mention of the attainder or abjuration: the pardon is void."

P. What is it to be attainted?

L. To be attainted is, that his blood be held in law as stained and corrupted; so that no inheritance can descend from him to his children, or to any that make claim by him.

P. Is this attaint a part of the crime or of the punishment?

L. It cannot be a part of the crime, because it is none of his own act; it is therefore a part of the punishment, viz. a disherison of the offender.

P. If it be a part of the punishment due, and yet not pardoned together with the rest, then a pardon is not a thorough remitting of the punishment, as Sir Edward Coke says it is. And what is abjuration?

L. When a clerk heretofore was convicted of felony, he might have saved his life by abjuring the realm; that is, by departing the realm within a certain time appointed, and taking an oath never to return. But at this day all statutes for abjuration are repealed.

P. That also is a punishment, and by a pardon of the felony pardoned, unless a statute be in force to the contrary. There is also somewhat in the statute of 13 *Rich. II, c.* 1, concerning the allowance of charters of pardons, which I understand not well. The words are these: "No charter of pardon for henceforth shall be allowed before our

Of pardoning. justices for murder, or for the death of a man by await, or malice prepensed, treason, or rape of a woman, unless the same be specified in the same charter." For I think it follows thence, that if the King say in his charter that he pardoneth the murder, then he breaketh not the statute, because he specifies the offence: or if he saith he pardoneth the killing by await or of malice prepensed, he breaketh not the statute, he specifies the offence. Also if he say so much as that the judge cannot doubt of the King's meaning to pardon him, I think the judge ought to allow it, because the statute saveth the King's liberty and regality in that point; that is to say, the power to pardon him, such as are these words, "notwithstanding any statute to the contrary," are sufficient to cause the charter to be allowed; for these words make it manifest that the charter was not granted upon surprise, but to maintain and claim the King's liberty and power to show mercy when he seeth cause. The like meaning have these words, *perdonavimus omnimodam interfectionem;* that is to say, we have pardoned the killing, in what manner soever it was done. But here we must remember that the King cannot pardon, without sin, any damage thereby done to another man, unless he causes satisfaction to be made as far as the offender possibly can; but he is not bound to satisfy men's thirst of revenge; for all revenge ought to proceed from God, and under God from the King. Now, besides in charters, how are these offences specified?

L. They are specified by their names, as treason, petite treason, murder, rape, felony, and the like.

P. Petite treason is felony, murder is felony; so

is rape, robbery, and theft; and, as Sir Edward Coke says, petite larceny is felony. Now if in a Parliament-pardon, or in a Coronation-pardon, all felonies be pardoned, whether is petite larceny pardoned, or not? Of pardoning.

L. Yes, certainly, it is pardoned.

P. And yet you see it is not specified; and yet it is a crime that hath less in it of the nature of felony, than there is in robbery. Do not therefore rape, robbery, theft, pass under the pardon of all felonies?

L. I think they are all pardoned by the words of the statute, but those that are by the same statute excepted; so that specification is needful only in charters of pardon, but in general pardons not so. For the statute 13 *Rich. II, c.* 1, forbids not the allowance of Parliament-pardons, or Coronation-pardons; and therefore the offences pardoned need not be specified, but may pass under the general word of *all felonies.* Nor is it likely that the members of the Parliament, who drew up their own pardons, did not mean to make them as comprehensive as they could. And yet Sir Edward Coke (1 *Inst. sec.* 745), at the word *felony*, seemeth to be of another mind. For piracy is one species of felony; and yet when certain Englishmen had committed piracy in the last year of Queen Elizabeth, and came home into England in the beginning of the reign of King James, trusting to his coronation-pardon of all felonies, they were indicted (Sir Edward Coke was then Attorney-general) of the piracy before commissioners, according to the statute of 28 *Hen. VIII*, and being found guilty were hanged. The reason he allegeth for it is, that it

Of pardoning. ought to have been specified by the name of *piracy* in the pardon, and therefore the pardon was not to be allowed.

P. Why ought it to have been specified more than any other felony? He should therefore have drawn his argument from the law of reason.

L. Also he does that; for the trial, he says, was by the common-law, and before commissioners, not in the Court of the Lord Admiral, by the civil law; therefore, he says, it was an offence whereof the common-law could not take any notice, because it could not be tried by twelve men.

P. If the common-law could not, or ought not, to take notice of such offences, how could the offenders be tried by twelve men, and found guilty, and hanged as they were? If the common-law take no notice of piracy, what other offence was it for which they were hanged? Is piracy two felonies, for one of which a man shall be hanged by the civil-law, and for the other by the common-law? Truly I never read weaker reasoning in any author of the law of England, than in Sir Edward Coke's Institutes, how well soever he could plead.

L. Though I have heard him much reprehended by others as well as by you, yet there be many excellent things, both for subtilty and for truth, in these his Institutes.

P. No better things than other lawyers have, that write of the law as of a science. His citing of Aristotle, and of Homer, and of other books which are commonly read by gownmen, do, in my opinion, but weaken his authority; for any man may do it by a servant. But seeing the whole scene of that time is gone and past, let us proceed to somewhat

else. Wherein doth an *Act of Oblivion* differ from a Parliament-pardon? Of pardoning.

L. This word *Act of Oblivion* was never in our law-books before the 12 *Car. II. c.* 11, and I wish it may never come again; but from whence it came, you may better know perhaps than I.

P. The first and only Act of Oblivion that ever passed into a law, in any state that I have read of, was that *amnestia* or *oblivion* of all quarrels between any of the citizens of Athens, at any time before that act, without all exception of crime or person. The occasion whereof was this. The Lacedæmonians having totally subdued the Athenians, entered into the city of Athens, and ordained that the people should choose thirty people of their own city to have the sovereign power over them. These being chosen, behaved themselves so outrageously, as caused a sedition, in which the citizens on both sides were daily slain. There was then a discreet person that propounded to each of the parties this proposition, that every man should return to his own and forget all that was past; which proposition was made, by consent on both sides, into a public act, which for that cause was called an *oblivion*. Upon the like disorder happening in Rome by the murder of Julius Cæsar, the like act was propounded by Cicero, and indeed passed, but was within a few days after broken again by Marcus Antonius. In imitation of this act was made the act of 12 *Car. II. c.* 11.

L. By this it seems, that the Act of Oblivion made by King Charles was no other than a Parliament-pardon, because it containeth a great number of exceptions, as the other Parliament-pardons do, and the act of Athens did not.

Of pardoning.

P. But yet there is a difference between the late Act of Oblivion made here, and an ordinary Parliament-pardon. For concerning a fault pardoned in Parliament by a general word, a suit in law may arise about this, whether the offender be signified by the word or not, as whether the pardon of all felonies be a pardon of piracy or not. For you see by Sir Edward Coke's reports, that notwithstanding a pardon of felony, a sea-felony, when he was Attorney-General, was not pardoned. But by the late Act of Oblivion, which pardoned all manner of offences committed in the late civil war, no question could arise concerning crimes excepted. First, because no man can by law accuse another man of a fact, which by law is to be forgotten. Secondly, because all crimes may be alleged as proceeding from the licentiousness of the time, and from the silence of the law occasioned by the civil war, and consequently (unless the offender's person also were excepted, or unless the crime were committed before the war began) are within the pardon.

L. Truly I think you say right. For if nothing had been pardoned but what was done by the occasion of the war, the raising of the war itself had not been pardoned.

Of the laws of *meum* and *tuum*.

P. I have done with crimes and punishments; let us come now to the laws of *meum* and *tuum*.

L. We must then examine the statutes.

P. We must so, what they command and forbid; but not dispute of their justice. For the law of reason commands that every one observe the law which he hath assented to, and obey the person to whom he hath promised obedience and fidelity.

Then let us consider next the commentaries of Sir Edward Coke upon Magna Charta and other statutes. For the understanding of Magna Charta it will be very necessary to run up into ancient times, as far as history will give us leave, and consider not only the customs of our ancestors the Saxons, but also the law of nature, the most ancient of all laws, concerning the original of government and acquisition of property, and concerning courts of judicature. And first, it is evident that dominion, government, and laws, are far more ancient than history or any other writing, and that the beginning of all dominion amongst men was in families. In which, first, the father of the family by the law of nature was absolute lord of his wife and children: secondly, made what laws amongst them he pleased: thirdly, was judge of all their controversies: fourthly, was not obliged by any law of man to follow any counsel but his own: fifthly, what land soever the lord sat down upon and made use of for his own and his family's benefit, was his propriety by the law of first possession, in case it was void of inhabitants before, or by the law of war, in case they conquered it. In this conquest what enemies they took and saved, were their servants. Also such men as wanting possessions of lands, but furnished with arts necessary for man's life, came to dwell in the family for protection, became their subjects, and submitted themselves to the laws of the family. And all this is consonant, not only to the law of nature, but also to the practice of mankind set forth in history, sacred and profane.

Of the laws of *meum* and *tuum*.

L. Do you think it lawful for a lord, that is the so-

Of the laws of *meum* and *tuum*.

vereign ruler of his family, to make war upon another like sovereign lord, and dispossess him of his lands?

P. It is lawful or not lawful, according to the intention of him that does it. For, first, being a sovereign ruler, he is not subject to any law of man; and as to the law of God, where the intention is justifiable, the action is so also. The intention may be lawful in divers cases by the right of nature; one of those cases is, when he is constrained to it by the necessity of subsisting. So the children of Israel, besides that their leaders, Moses and Joshua, had an immediate command from God to dispossess the Canaanites, had also a just pretence to do what they did, from the right of nature which they had to preserve their lives, being unable otherwise to subsist. And as their preservation, so also is their security a just pretence of invading those whom they have just cause to fear, unless sufficient caution be given to take away their fear: which caution, for anything I can yet conceive, is utterly impossible. Necessity and security are the principal justifications before God, of beginning war. Injuries received justify a war defensive; but for reparable injuries, if reparation be tendered, all invasion upon that title is iniquity. If you need examples, either from Scripture or other history, concerning this right of nature in making war, you are able enough of your own reading to find them out at your leisure.

L. Whereas you say, that the lands so won by the sovereign lord of a family, are his in propriety, you deny, methinks, all property to the subjects, how much soever any of them have contributed to the victory.

P. I do so; nor do I see any reason to the contrary. For the subjects, when they come into the family, have no title at all to demand any part of the land, or anything else but security: to which also they are bound to contribute their whole strength, and, if need be, their whole fortunes. For it cannot be supposed that any one man can protect all the rest with his own single strength; and for the practice, it is manifest, in all conquests the land of the vanquished is in the sole power of the victor, and at his disposal. Did not Joshua and the High-priest divide the land of Canaan in such sort among the tribes of Israel as they pleased? Did not the Roman and Grecian princes and states, according to their own discretion, send out the colonies to inhabit such provinces as they had conquered? Is there at this day among the Turks, any inheritor of land besides the Sultan? And was not all the land in England once in the hands of William the Conqueror? Sir Edward Coke himself confesses it. Therefore it is an universal truth, that all conquered lands, presently after victory, are the lands of him that conquered them. Of the laws of *meum* and *tuum*.

L. But you know that all sovereigns are said to have a double capacity, viz. a natural capacity, as he is a man; and a politic capacity, as a king. In his politic capacity, I grant you, that King William the Conqueror was the proper and only owner once of all the land in England; but not in his natural capacity.

P. If he had them in his politic capacity, then they were so his own, as not to dispose of any part thereof but only to the benefit of his people; and that must be either by his own, or by the people's

Of the laws of *meum* and *tuum*.

discretion, that is, by Act of Parliament. But where do you find that the Conqueror disposed of his lands (as he did some to Englishmen, some to Frenchmen, and some to Normans, to be holden by divers tenures, as knight-service, soccage, &c.) by Act of Parliament? Or that he ever called a Parliament, to have the assent of the Lords and Commons of England in disposing of those lands he had taken from them? Or for retaining of such and such lands in his own hands, by the name of forrests, for his own recreation or magnificence? You have heard perhaps that some lawyers, or other men reputed wise and good patriots, have given out that all the lands which the Kings of England have possessed, have been given them by the people, to the end that they should therewith defray the charges of their wars, and pay the wages of their ministers; and that those lands were gained by the people's money. For that was pretended in the late civil war, when they took from the King his town of Kingston-upon-Hull. But I know you do not think that the pretence was just. It cannot therefore be denied but that the lands, which King William the Conqueror gave away to Englishmen and others, and which they now hold by his letters-patent and other conveyances, were properly and really his own, or else the titles of them that now hold them, must be invalid.

L. I assent. As you have showed me the beginning of monarchies, so let me hear your opinion concerning their growth.

P. Great monarchies have proceeded from small families. First, by war, wherein the victor not only enlarged his territory, but also the number

and riches of his subjects. As for the other forms of commonwealths, they have been enlarged other ways. First, by a voluntary conjunction of many lords of families into one great aristocracy. Secondly, from rebellion proceeded first anarchy, and from anarchy proceeded any form that the calamities of them that lived therein did prompt them to; whether it were, that they chose an hereditary King, or an elective King for life; or that they agreed upon a council of certain persons, which is *aristocracy;* or a council of the whole people to have the sovereign power, which is *democracy.* After the first manner, which is by war, grew up all the greatest kingdoms in the world, viz. the Egyptian, Assyrian, Persian, and the Macedonian monarchy; and so did the great kingdoms of England, France, and Spain. The second manner, was the original of the Venetian Aristocracy. By the the third way, which is rebellion, grew up divers great monarchies, perpetually changing from one form to another: as in Rome, rebellion against Kings produced democracy, upon which the senate usurped under Sylla, and the people again upon the senate under Marius, and the Emperor usurped upon the people under Cæsar and his successors.

Of the laws of *meum* and *tuum.*

L. Do you think the distinction between natural and politic capacity is insignificant?

P. No. If the sovereign power be in an assembly of men, that assembly, whether it be *aristocratical* or *democratical,* may possess lands; but it is in their politic capacity: because no natural man has any right to those lands, or any part of them. In the same manner, they can command an act by plurality of commands; but the command of

Of the laws of *meum* and *tuum*.

any one of them is of no effect. But when the sovereign power is in one man, the natural and politic capacity are in the same person, and as to possession of lands, undistinguishable. But as to the acts and commands, they may be well distinguished in this manner. Whatsoever a monarch does command or do, by consent of the people of his kingdom, may properly be said to be done in his politic capacity; and whatsoever he commands by word of mouth only, or by letters signed with his hand, or sealed with any of his private seals, is done in his natural capacity. Nevertheless, his public commands, though they be made in his politic capacity, have their original from his natural capacity. For in the making of laws, which necessarily requires his assent, his assent is natural. Also those acts which are done by the King previously to the passing of them under the Great Seal of England, either by word of mouth, or warrant under his signet or private seal, are done in his natural capacity; but when they have passed the Seal of England, they are to be taken as done in his politic capacity.

L. I think verily your distinction is good. For natural capacity and politic capacity signify no more than private and public right. Therefore, leaving this argument, let us consider in the next place, as far as history will permit, what were the laws and customs of our ancestors.

P. The Saxons, as also all the rest of Germany not conquered by the Roman Emperors nor compelled to use the imperial laws, were a savage and heathen people, living only by war and rapine, and as some men learned in the Roman antiquities affirm, had their name of Germans from that their

ancient trade of life, as if *Germans* and *hommes de guerre* were all one. Their rule over their family, servants, and subjects, was absolute; their laws, no other than natural equity; written law they had little or none; and very few there were in the time of the Cæsars that could write or read. The right to the government was either paternal, or by conquest, or by marriages. Their succession to lands was determined by the pleasure of the master of the family, by gift or deed in his lifetime; and what land they disposed not of in their lifetime, descended after their death to their heirs. The heir was the eldest son. The issue of the eldest son failing, they descended to the younger sons in their order; and, for want of sons, to the daughters jointly as to one heir, or to be divided amongst them, and so to descend to their heirs in the same manner. And children failing, the uncle by the father's or mother's side, according as the lands had been the father's or the mother's, succeeded to the inheritance, and so continually to the next of blood. And this was a natural descent, because naturally the nearer in blood the nearer in kindness, and was held for the law of nature, not only amongst the Germans, but also in most nations before they had a written law. The right of government, which is called *jus regni*, descended in the same manner, except only that after the sons it came to the eldest daughter first, and her heirs; the reason whereof was, that government is indivisible. And this law continues still in England.

Of the laws of *meum* and *tuum*.

L. Seeing all the land, which any sovereign lord possessed, was his own in propriety, how came a subject to have a propriety in their lands?

Of the laws of *meum* and *tuum*.

P. There be two sorts of propriety. One is, when a man holds his land from the gift of God only, which lands civilians call *allodial;* which in a kingdom, no man can have but the King. The other is, when a man holds his land from another man, as given him in respect of service and obedience to that man, as a fee. The first kind of propriety is absolute; the other is in a manner conditional, because given for some service to be done unto the giver. The first kind of propriety excludes the right of all others; the second excludes the right of all other subjects to the same land, but not the right of the sovereign, when the common good of the people shall require the use thereof.

L. When those kings had thus parted with their lands, what was left them for the maintenance of their wars, either offensive or defensive; or for the maintenance of the royal family in such manner as not only becomes the dignity of a sovereign king, but is also necessary to keep his person and people from contempt?

P. They have means enough; and besides what they gave their subjects, had much land remaining in their own hands, afforrested for their recreation. For you know very well that a great part of the land of England was given for military service to the great men of the realm, who were for the most part of the King's kindred or great favourites; much more land than they had need of for their own maintenance; but so charged with one or many soldiers, according to the quantity of land given, as there could be no want of soldiers at all times ready to resist an invading enemy: which soldiers those lords were bound to furnish, for a time cer-

tain, at their own charges. You know also, that the whole land was divided into hundreds, and those again into decennaries; in which decennaries all men, even to children of twelve years of age, were bound to take the oath of allegiance. And you are to believe, that those men that hold their land by the service of husbandry, were all bound with their bodies and fortunes to defend the kingdom against invaders, by the law of nature. And so also such as they called villains, and as held their land by baser drudgery, were obliged to defend the kingdom to the utmost of their power. Nay, women and children, in such a necessity, are bound to do such service as they can, that is to say, to bring weapons and victuals to them that fight, and to dig. But those that hold their land by service military, have lying upon them a greater obligation. For read and observe the form of doing homage, according as it is set down in the statute of 17 *Edw. II*, which you doubt not was in use before that time, and before the Conquest. Of the laws of *meum* and *tuum*.

L. I become your man for life, for member, and for worldly honour, and shall owe you my faith for the lands that I hold of you.

P. I pray you expound it.

L. I think it is as much as if you should say, I promise you to be at your command, to perform with the hazard of my life, limbs, and all my fortune, as I have charged myself in the reception of the lands you have given me, and to be ever faithful to you. This is the form of homage done to the King immediately. But when one subject holdeth land of another by the like military service, then there is an exception added, viz. *saving the faith I owe to the King*.

Of the laws of *meum* and *tuum*.

P. Did he not also take an oath?

L. Yes, which is called the oath of fealty: *I shall be to you both faithful, and lawfully shall do such customs and services, as my duty is to you at the terms assigned, so help me God and all his Saints.* But both these services, and the services of husbandry, were quickly after turned into rents, payable either in money, as in England, or in corn or other victuals, as in Scotland and France. When the service was military, the tenant was for the most part bound to serve the King in his wars, with one or more persons, according to the yearly value of the land he held.

P. Were they bound to find horsemen, or footmen?

L. I do not find any law that requires any man, in respect of his tenancy, to serve on horseback.

P. Was the tenant bound, in case he were called, to serve in person?

L. I think he was so in the beginning. For when lands were given for service military, and the tenant dying left his son and heir, the lord had the custody both of body and lands till the heir was twenty-one years old. And the reason thereof was, that the heir, till that age of twenty-one years, was presumed to be unable to serve the King in his wars; which reason had been insufficient, if the heir had not been bound to go to the wars in person. Which, methinks, should ever hold for law, unless by some other law it come to be altered. These services, together with other rights, as wardships, first possession of his tenants' inheritance, licenses for alienation, felons' goods, felons' lands (if they were holden of the King), and the first year's profit of the lands, of whomsoever they were holden, for-

feitures, amercements, and many other aids, could not but amount to a very great yearly revenue. Add to this all that which the King might reasonably have imposed upon artificers and tradesmen; for all men, whom the King protecteth, ought to contribute towards their own protection; and consider then whether the Kings of those times had not means enough, and to spare (if God were not their enemy), to defend their people against foreign enemies, and also to compel them to keep the peace amongst themselves. Of the laws of *meum* and *tuum*.

P. And so had had the succeeding Kings, if they had never given their rights away, and their subjects always kept their oaths and promises. In what manner proceeded those ancient Saxons, and other nations of Germany, especially the northern parts, to the making of their laws?

L. Sir Edward Coke, out of divers Saxon laws, gathered and published in Saxon and Latin by Mr. Lambard, inferreth that the Saxon Kings, for the making of their laws, called together the Lords and Commons, in such manner as is used at this day in England. But by those laws of the Saxons published by Mr. Lambard, it appeareth, that the Kings called together the bishops, and a great part of the wisest and discreetest men of the realm, and made laws by their advice.

P. I think so. For there is no King in the world, being of ripe years and sound mind, that made any law otherwise. For it concerns them in their own interest to make such laws as the people can endure, and may keep them without impatience, and live in strength and courage to defend their King and country, against their potent neighbours. But

Of the laws of *meum* and *tuum*.

how was it discerned, and by whom was it determined, who were those wisest and discreetest men? It is a hard matter to know who is wisest in our times. We know well enough who chooseth a knight of the shire, and what towns are to send burgesses to the Parliament. Therefore if it were determined also in those days, who those wise men should be, then I confess that the Parliaments of the old Saxons, and the Parliaments of England since, are the same thing, and Sir Edward Coke is in the right. Tell me therefore, if you can, when those towns, which now send burgesses to the Parliament, began to do so, and upon what cause one town had this privilege, and another town, though much more populous, had not.

L. At what time began this custom I cannot tell; but I am sure it is more ancient than the city of Salisbury. Because there come two burgesses to Parliament for a place near to it, called Old Sarum, which, as I rid in sight of it, if I should tell a stranger that knew not what the word burgess meant, he would think it were a couple of rabbits; the place looketh so like a long cony-borough. And yet a good argument may be drawn from thence, that the townsmen of every town were the electors of their own burgesses, and judges of their discretion; and that the law, whether they be discreet or not, will suppose them to be discreet, till the contrary be apparent. Therefore where it is said, that the King called together the more discreet men of his realm; it must be understood of such elections as are now in use. By which it is manifest, that those great and general moots assembled by the old Saxon Kings, were of the same

nature with the Parliaments assembled since the Conquest. Of the laws of *meum* and *tuum*.

P. I think your reason is good. For I cannot conceive, how the King, or any other but the inhabitants of the boroughs themselves, can take notice of the discretion or sufficiency of those they were to send to the Parliament. And for the antiquity of the burgess-towns, since it is not mentioned in any history or certain record now extant, it is free for any man to propound his conjecture. You know that this land was invaded by the Saxons at several times, and conquered by pieces in several wars; so that there were in England many Kings at once, and every of them had his Parliament. And therefore according as there were more, or fewer walled towns within each King's dominion, his Parliament had the more or fewer burgesses. But when all these lesser kingdoms were joined into one, then to that one Parliament came burgesses from all the boroughs of England. And this perhaps may be the reason, why there be so many more such boroughs in the west, than in any other part of the kingdom; the west being more populous, and also more obnoxious to invaders, and for that cause having greater store of towns fortified. This I think may be the original of that privilege which some towns have, to send burgesses to the Parliament, and others have not.

L. The conjecture is not improbable, and for want of greater certainty, may be allowed. But seeing it is commonly received, that for the making of a law, there ought to be had the assent of the Lords spiritual and temporal; whom do you account in the Parliaments of the old Saxons for

Of the laws of *meum* and *tuum*.

Lords temporal, and whom for Lords spiritual? For the book called *The mode of holding Parliaments*, agreeth punctually with the manner of holding them at this day, and was written, as Sir Edward Coke says, in the time of the Saxons, and before the Conquest.

P. Mr. Selden, a greater antiquary than Sir Edward Coke, in the last edition of his book of *Titles of Honour*, says, that that book called *The mode of holding Parliaments*, was not written till about the time of Richard II, and seems to me to prove it. But howsoever that be, it is apparent by the Saxon laws set forth by Mr. Lambard, that there were always called to the Parliament certain great persons called Aldermen, *alias* Earls. And so you have a House of Lords, and a House of Commons. Also you will find in the same place, that after the Saxons had received the faith of Christ, those bishops that were amongst them, were always at the great moots in which they made their laws. Thus you have a perfect English Parliament, saving that the name of Barons was not amongst them, as being a French title, which came in with the Conqueror.

BEHEMOTH:

THE HISTORY OF THE CAUSES

OF

THE CIVIL WARS OF ENGLAND,

AND OF THE COUNSELS AND ARTIFICES BY WHICH

THEY WERE CARRIED ON FROM THE

YEAR 1640 TO THE YEAR 1660.

" Bella per Angliacos plusquam civilia campos,
Jusque datum sceleri loquimur.———"

THE BOOKSELLER TO THE READER.

My duty, as well to the public as to the memory of Mr. Hobbes, has obliged me to procure with my utmost diligence, that these tracts should come forth with the most correct exactness.*

I am compelled by the force of truth to declare, how much both the world and the memory of Mr. Hobbes have been abused by the several spurious editions of the *History of the Civil Wars;* wherein, by various and unskilful transcriptions, are committed above a thousand faults, and in above a hundred places whole lines left out, as I can make appear.

I must confess Mr. Hobbes, upon some considerations, was averse to the publishing thereof; but since it is impossible to suppress it, no book being more commonly sold by all booksellers, I hope I need not fear the offence of any man by doing right to the

* This preface is prefixed to the edition of 1682, in which the *Behemoth* is printed along with the *Answer to Archbishop Bramhall,* the *Discourse of Heresy,* and the *Physical Problems.*

world and this work, which I now publish from the original manuscript, done by his own amanuensis, and given me by himself above twelve years since.

To this I have joined the treatise against Archbishop Bramhall, to prevent the like prejudice, which must certainly have fallen on it, there being so many false copies abroad, if not thus prevented; as also the Discourse of Heresy from a more correct copy; and have likewise annexed his Physical Problems, as they were translated by himself and presented to his Majesty, with the epistle prefixed, in the year 1662, at the same time they came forth in Latin.

These things premised, there remains nothing but to wish for myself good sale, to the buyer much pleasure and satisfaction.

Your humble servant,

WILLIAM CROOKE.

BEHEMOTH,

OR THE EPITOME OF

THE CIVIL WARS OF ENGLAND.

PART I.

A. If in time, as in place, there were degrees of high and low, I verily believe that the highest of time would be that which passed between 1640 and 1660. For he that thence, as from the Devil's Mountain, should have looked upon the world and observed the actions of men, especially in England, might have had a prospect of all kinds of injustice, and of all kinds of folly, that the world could afford, and how they were produced by their hypocrisy and self-conceit, whereof the one is double iniquity, and the other double folly.

B. I should be glad to behold that prospect. You that have lived in that time and in that part of your age, wherein men used to see best into good and evil, I pray you set me, that could not see so well, upon the same mountain, by the relation of the actions you then saw, and of their causes, pretensions, justice, order, artifice, and event.

A. In the year 1640, the government of England was monarchical; and the King that reigned, Charles, the first of that name, holding the sovereignty, by right of a descent continued above six

PART I. hundred years, and from a much longer descent King of Scotland, and from the time of his ancestor Henry II, King of Ireland; a man that wanted no virtue, either of body or mind, nor endeavoured anything more than to discharge his duty towards God, in the well governing of his subjects.

B. How could he then miscarry, having in every county so many trained soldiers, as would, put together, have made an army of 60,000 men, and divers magazines of ammunition in places fortified?

A. If those soldiers had been, as they and all other of his subjects ought to have been, at his Majesty's command, the peace and happiness of the three kingdoms had continued as it was left by King James. But the people were corrupted generally, and disobedient persons esteemed the best patriots.

B. But sure there were men enough, besides those that were ill-affected, to have made an army sufficient to have kept the people from uniting into a body able to oppose him.

A. Truly, I think, if the King had had money, he might have had soldiers enough in England. For there were very few of the common people that cared much for either of the causes, but would have taken any side for pay or plunder. But the King's treasury was very low, and his enemies, that pretended the people's ease from taxes, and other specious things, had the command of the purses of the city of London, and of most cities and corporate towns in England, and of many particular persons besides.

B. But how came the people to be so corrupted? And what kind of people were they that did so seduce them?

A. The seducers were of divers sorts. One sort were ministers; ministers, as they called themselves, of Christ; and sometimes, in their sermons to the people, God's ambassadors; pretending to have a right from God to govern every one his parish, and their assembly the whole nation.

Secondly, there were a very great number, though not comparable to the other, which notwithstanding that the Pope's power in England, both temporal and ecclesiastical, had been by Act of Parliament abolished, did still retain a belief that we ought to be governed by the Pope, whom they pretended to be the vicar of Christ, and, in the right of Christ, to be the governor of all Christian people. And these were known by the name of Papists; as the ministers I mentioned before, were commonly called Presbyterians.

Thirdly, there were not a few, who in the beginning of the troubles were not discovered, but shortly after declared themselves for a liberty in religion, and those of different opinions one from another. Some of them, because they would have all congregations free and independent upon one another, were called Independents. Others that held baptism to infants, and such as understood not into what they are baptized, to be ineffectual, were called therefore Anabaptists. Others that held that Christ's kingdom was at this time to begin upon the earth, were called Fifth-monarchy-men; besides divers other sects, as Quakers, Adamites, &c., whose names and peculiar doctrines I do not well remember. And these were the enemies which arose against his Majesty from the private interpretation of the Scripture, exposed to every man's scanning in his mother-tongue.

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Fourthly, there were an exceeding great number of men of the better sort, that had been so educated, as that in their youth having read the books written by famous men of the ancient Grecian and Roman commonwealths concerning their polity and great actions; in which books the popular government was extolled by that glorious name of liberty, and monarchy disgraced by the name of tyranny; they became thereby in love with their forms of government. And out of these men were chosen the greatest part of the House of Commons, or if they were not the greatest part, yet by advantage of their eloquence, were always able to sway the rest.

Fifthly, the city of London and other great towns of trade, having in admiration the prosperity of the Low Countries after they had revolted from their monarch, the King of Spain, were inclined to think that the like change of government here, would to them produce the like prosperity.

Sixthly, there were a very great number that had either wasted their fortunes, or thought them too mean for the good parts they thought were in themselves; and more there were, that had able bodies, but saw no means how honestly to get their bread. These longed for a war, and hoped to maintain themselves hereafter by the lucky choosing of a party to side with, and consequently did for the most part serve under them that had greatest plenty of money.

Lastly, the people in general were so ignorant of their duty, as that not one perhaps of ten thousand knew what right any man had to command him, or what necessity there was of King or Common-

wealth, for which he was to part with his money against his will; but thought himself to be so much master of whatsoever he possessed, that it could not be taken from him upon any pretence of common safety without his own consent. King, they thought, was but a title of the highest honour, which gentleman, knight, baron, earl, duke, were but steps to ascend to, with the help of riches; they had no rule of equity, but precedents and custom; and he was thought wisest and fittest to be chosen for a Parliament, that was most averse to the granting of subsidies or other public payments.

B. In such a constitution of people, methinks, the King is already ousted of his government, so as they need not have taken arms for it. For I cannot imagine how the King should come by any means to resist them.

A. There was indeed very great difficulty in the business. But of that point you will be better informed in the pursuit of this narration.

B. But I desire to know first, the several grounds of the pretences, both of the Pope and of the Presbyterians, by which they claim a right to govern us, as they do, in chief: and after that, from whence and when crept in the pretences of that Long Parliament, for a democracy.

A. As for the Papists, they challenge this right from a text in *Deut.* xvii. 12, and other like texts, according to the old Latin translation in these words: *And he that out of pride shall refuse to obey the commandment of that priest, which shall at that time minister before the Lord thy God, that man shall by the sentence of the judge be put to death.* And because, as the Jews were the people of God

PART I. then, so is all Christendom the people of God now, they infer from thence, that the Pope, whom they pretend to be the high-priest of all Christian people, ought also to be obeyed in all his decrees by all Christians, upon pain of death. Again, whereas in the New Testament (Matth. xxviii. 18-20) Christ saith: *All power is given unto me in heaven and in earth; go therefore and teach all nations, and baptize them in the name of the Father, and of the Son, and of the Holy Ghost, and teach them to observe all these things which I have commanded you:* from thence they infer, that the command of the apostles was to be obeyed, and by consequence the nations were bound to be governed by them, and especially by the prince of the apostles, St. Peter, and by his successors the Popes of Rome.

B. For the text in the Old Testament, I do not see how the commandment of God to the Jews, to obey their priests, can be interpreted to have the like force in the case of other nations Christian, more than upon nations unchristian (for all the world are God's people); unless we also grant, that a king cannot of an infidel be made Christian, without making himself subject to the laws of that apostle, or priest, or minister, that shall convert him. The Jews were a peculiar people of God, a sacerdotal kingdom, and bound to no other law but what first Moses, and afterwards every high-priest, did go and receive immediately from the mouth of God in Mount Sinai, in the tabernacle of the ark, and in the *sanctum sanctorum* of the temple. And for the text in St. Matthew, I know the words in the Gospel are not *go teach*, but *go and make disciples;* and that there is a great difference

between a subject and a disciple, and between teaching and commanding. And if such texts as these must be so interpreted, why do not Christian kings lay down their titles of majesty and sovereignty, and call themselves the Pope's lieutenants? But the doctors of the Romish Church seem to decline that title of absolute power, in their distinction of power spiritual and temporal; but this distinction I do not very well understand.

A. By spiritual power they mean the power to determine points of faith, and to be judges in the inner court of conscience of moral duties, and a power to punish those men, that obey not their precepts, by ecclesiastical censure, that is, by excommunication. And this power, they say, the Pope hath immediately from Christ, without dependence upon any king or sovereign assembly, whose subjects they be that stand excommunicate. But for the power temporal, which consists in judging and punishing those actions that are done against the civil laws, they say, they do not pretend to it directly, but only indirectly, that is to say, so far forth as such actions tend to the hindrance or advancement of religion and good manners, which they mean when they say *in ordine ad spiritualia.*

B. What power then is left to Kings and other civil sovereigns, which the Pope may not pretend to be his *in ordine ad spiritualia?*

A. None, or very little. And this power not only the Pope pretends to in all Christendom; but some of his bishops also, in their several dioceses, *jure divino,* that is, immediately from Christ, without deriving it from the Pope.

B. But what if a man refuse obedience to this

PART I. pretended power of the Pope and his bishops? What harm can excommunication do him, especially if he be the subject of another sovereign?

A. Very great harm. For by the Pope's or bishop's signification of it to the civil power, he shall be punished sufficiently.

B. He were in an ill case then, that adventured to write or speak in defence of the civil power, that must be punished by him whose rights he defended, like Uzza, that was slain because he would needs, unbidden, put forth his hand to keep the ark from falling. But if a whole nation should revolt from the Pope at once, what effect could excommunication have upon the nation?

A. Why, they should have no more mass said, at least by any of the Pope's priests. Besides, the Pope would have no more to do with them, but cast them off, and so they would be in the same case as if a nation should be cast off by their king, and left to be governed by themselves, or whom they would.

B. This would not be taken so much for a punishment to the people, as to the King; and therefore when a Pope excommunicates a whole nation, methinks he rather excommunicates himself than them. But I pray you tell me, what were the rights that the Pope pretended to in the kingdoms of other princes?

A. First, an exemption of all priests, friars, and monks, in criminal causes, from the cognizance of civil judges. Secondly, collation of benefices on whom he pleased, native or stranger, and exaction of tenths, first fruits, and other payments. Thirdly, appeals to Rome in all causes where the Church

could pretend to be concerned. Fourthly, to be the supreme judge concerning lawfulness of marriage, that is concerning the hereditary succession of Kings, and to have the cognizance of all causes concerning adultery and fornication.

B. Good! A monopoly of women.

A. Fifthly, a power of absolving subjects of their duties, and of their oaths of fidelity to their lawful sovereigns, when the Pope should think fit for the extirpation of heresy.

B. This power of absolving subjects of their obedience, as also that other of being judge of manners and doctrine, is as absolute a sovereignty as is possible to be; and consequently there must be two kingdoms in one and the same nation, and no man be able to know which of his masters he must obey.

A. For my part, I should rather obey that master that had the right of making laws and of inflicting punishments, than him that pretendeth only to a right of making canons, that is to say, rules, and no right of co-action, or otherwise punishing, but by excommunication.

B. But the Pope pretends also that his canons are laws; and for punishing, can there be greater than excommunication; supposing it true, as the Pope saith it is, that he that dies excommunicate is damned? Which supposition, it seems, you believe not; else you would rather have chosen to obey the Pope, that would cast your body and soul into hell, than the King, that can only kill the body.

A. You say true. For it were very uncharitable in me to believe that all Englishmen, except a few Papists, that have been born and called heretics ever since the Reformation of Religion in England, should be damned.

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B. But for those that die excommunicate in the Church of England at this day, do you not think them also damned?

A. Doubtless, he that dies in sin without repentance is damned, and he that is excommunicate for disobedience to the King's laws, either spiritual or temporal, is excommunicate for sin; and therefore, if he die excommunicate and without desire of reconciliation, he dies impenitent. You see what follows. But to die in disobedience to the precepts and doctrines of those men that have no authority or jurisdiction over us, is quite another case, and bringeth no such danger with it.

B. But what is this heresy, which the Church of Rome so cruelly persecutes, as to depose Kings that do not, when they are bidden, turn all heretics out of their dominions?

A. Heresy is a word which, when it is used without passion, signifies a private opinion. So the different sects of the old philosophers, Academians, Peripatetics, Epicureans, Stoics, &c., were called heresies. But in the Christian Church, there was in the signification of that word, comprehended a sinful opposition to him, that was chief judge of doctrines in order to the salvation of men's souls; and consequently heresy may be said to bear the same relation to the power spiritual, that rebellion doth to the power temporal, and is suitable to be persecuted by him that will preserve a power spiritual and dominion over men's consciences.

B. It would be very well, (because we are all of us permitted to read the Holy Scriptures, and bound to make them the rule of our actions, both public and private), that heresy were by some law

defined, and the particular opinions set forth, for which a man were to be condemned and punished as a heretic; for else, not only men of mean capacity, but even the wisest and devoutest Christian, may fall into heresy without any will to oppose the Church; for the Scriptures are hard, and the interpretations different of different men.

A. The meaning of the word heresy, is by law declared in an Act of Parliament in the first year of Queen Elizabeth; wherein it is ordained, that the persons who had by the Queen's letters-patent the authority spiritual, meaning the High Commission, shall not have authority to adjudge any matter or cause to be heresy, but only such as heretofore have been adjudged to be heresy by the authority of the canonical Scriptures, or by the first four general Councils, or by any other general Council, where the same was declared heresy by the express and plain words of the said canonical Scriptures, or such as hereafter shall be adjudged heresy by the high court of Parliament of this realm, with the assent of the clergy in their convocation.

B. It seems therefo re,if there arise any new error that hath not yet been declared heresy, (and many such may arise), it cannot be judged heresy without a Parliament. For how foul soever the error be, it cannot have been declared heresy neither in the Scriptures nor in the Councils; because it was never before heard of. And consequently there can be no error, unless it fall within the compass of blasphemy against God or treason against the King, for which a man can in equity be punished. Besides, who can tell what is declared by the Scripture,

PART I. which every man is allowed to read and interpret to himself? Nay more, what Protestant, either of the laity or clergy, if every general Council can be a competent judge of heresy, is not already condemned? For divers Councils have declared a great many of our doctrines to be heresy, and that, as they pretend, upon the authority of the Scriptures.

A. What are those points, that the first four general Councils have declared heresy?

B. The first general Council, held at Nicæa, declared all to be heresy which was contrary to the Nicene Creed, upon occasion of the heresy of Arius, which was the denying the divinity of Christ. The second general Council, held at Constantinople, declared heresy the doctrine of Macedonius; which was that the Holy Ghost was created. The third Council, assembled at Ephesus, condemned the doctrine of Nestorius, that there were two persons in Christ. The fourth, held at Chalcedon, condemned the error of Eutyches, that there was but one nature in Christ. I know of no other points condemned in these four Councils, but such as concern church-government, or the same doctrines taught by other men in other words. And these Councils were all called by the Emperors, and by them their decrees confirmed at the petition of the Councils themselves.

A. I see by this, that both the calling of the Council, and the confirmation of their doctrine and church-government, had no obligatory force but from the authority of the Emperor. How comes it then to pass, that they take upon them now a legislative power, and say their canons are laws?

That text, *all power is given to me in heaven and earth,* had the same force then as it hath now, and conferred a legislative power on the Councils, not only over Christian men, but over all nations in the world.

B. They say no; for the power they pretend to is derived from this, that when a king was converted from Gentilism to Christianity, he did by that very submission to the bishop that converted him, submit to the bishop's government and became one of his sheep; which right therefore he could not have over any nation that was not Christian.

A. Did Sylvester, which was Pope of Rome in the time of Constantine the Great, converted by him, tell the Emperor, his new disciple, beforehand, that if he became a Christian he must be the Pope's subject?

B. I believe not. For it is likely enough, if he had told him so plainly, or but made him suspect it, he would either have been no Christian at all, or but a counterfeit one.

A. But if he did not tell him so, and that plainly, it was foul play, not only in a priest, but in any Christian. And for this derivation of their right from the Emperor's consent, it proceeds only from this, that they dare not challenge a legislative power, nor call their canons laws in any kingdom in Christendom, further than the kings make them so. But in Peru, when Atabalipa was King, the friar told him, that Christ being King of all the world, had given the disposing of all the kingdoms therein to the Pope, and that the Pope had given Peru to the Roman Emperor Charles the Fifth, and required Atabalipa to resign it; and for re-

PART I. fusing it, seized upon his person by the Spanish army there present, and murdered him. You see by this how much they claim, when they have power to make it good.

B. When began the Popes to take this authority upon them first?

A. After the inundation of the northern people had overflowed the western parts of the empire, and possessed themselves of Italy, the people of the city of Rome submitted themselves, as well in temporals as spirituals, to their bishop; and then first was the Pope a temporal prince, and stood no more in so great fear of the Emperors, which lived far off at Constantinople. In this time it was that the Pope began, by pretence of his power spiritual, to encroach upon the temporal rights of all other princes of the west; and so continued gaining upon them, till his power was at the highest in that three hundred years, or thereabout, which passed between the eighth and eleventh century, that is, between Pope Leo the Third and Pope Innocent the Third. For in this time Pope Zachary the First deposed Chilperic, then King of France, and gave the kingdom to one of his subjects, Pepin; and Pepin took from the Lombards a great part of their territory and gave it to the Church. Shortly after, the Lombards having recovered their estate, Charles the Great retook it, and gave it to the Church again; and Pope Leo the Third made Charles Emperor.

B. But what right did the Pope then pretend for the creating of an Emperor?

A. He pretended the right of being Christ's vicar; and what Christ could give, his vicar might give; and you know that Christ was King of all the world.

B. Yes, as God; and so he gives all the kingdoms of the world, which nevertheless proceed from the consent of people, either for fear or hope.

A. But this gift of the empire was in a more special manner, in such a manner as Moses had the government of Israel given him; or rather as Joshua had it given him, to go in and out before the people as the high-priest should direct him. And so the empire was understood to be given him, on condition to be directed by the Pope. For when the Pope invested him with the regal ornaments, the people all cried out *Deus dat*, that is to say, it is God that gives it; and the Emperor was contented so to take it. And from that time, all or most of the Christian Kings do put into their titles the words *Dei gratia*, that is, by the gift of God; and their successors use still to receive the crown and sceptre from a bishop.

B. It is certainly a very good custom, for Kings to be put in mind by whose gift they reign; but it cannot from that custom be inferred that they receive the kingdom by mediation of the Pope, or by any other clergy; for the Popes themselves received the Papacy from the Emperor. The first that ever was elected Bishop of Rome after Emperors were Christians, and without the Emperor's consent, excused himself by letters to the Emperor with this: that the people and clergy of Rome forced him to take it upon him, and prayed the Emperor to confirm it, which the Emperor did; but with reprehension of their proceedings, and the prohibition of the like for the time to come. The Emperor was Lotharius, and the Pope Calixtus the First.

A. You see by this the Emperor never acknow-

PART I. ledged this gift of God was the gift of the Pope, but maintained, the Popedom was the gift of the Emperor. But in process of time, by the negligence of the Emperors, (for the greatness of Kings makes them that they cannot easily descend into the obscure and narrow mines of an ambitious clergy), they found means to make the people believe, there was a power in the Pope and clergy, which they ought to submit unto, rather than to the commands of their own Kings, whensoever it should come into controversy: and to that end devised and decreed many new articles of faith, to the diminution of the authority of kings, and to the disjunction of them and their subjects, and to a closer adherence of their subjects to the Church of Rome; articles either not at all found in, or not well founded upon the Scriptures; as first; that it should not be lawful for a priest to marry.

B. What influence could that have upon the power of Kings?

A. Do you not see, that by this the King must of necessity either want the priesthood, and therewith a great part of the reverence due to him from the most religious part of his subjects, or else want lawful heirs to succeed him: by which means, being not taken for the head of the Church, he was sure, in any controversy between him and the Pope, that his subjects would be against him?

B. Is not a Christian King as much a bishop now, as the heathen Kings were of old? for among them *episcopus* was a name common to all Kings. Is not he a bishop now, to whom God hath committed the charge of all the souls of his subjects, both of the laity and the clergy? And though he be in re-

lation to our Saviour, who is the chief pastor, but a sheep, yet, compared to his own subjects, they are all sheep, both laic and cleric, and he only shepherd. And seeing a Christian bishop is but a Christian endued with power to govern the clergy, it follows that every Christian king is not only a bishop, but an arch-bishop, and his whole dominion his diocese. And though it were granted, that imposition of hands is necessary from a priest; yet seeing Kings have the government of the clergy, that are his subjects even before baptism; the baptism itself, wherein he is received as a Christian, is a sufficient imposition of hands, so that whereas before he was a bishop, now he is a Christian bishop.

A. For my part I agree with you: this prohibition of marriage to priests came in about the time of Pope Gregory the Seventh, and William the First, King of England; by which means the Pope had in England, what with secular and what with regular priests, a great many lusty bachelors at his service.

Secondly, that auricular confession to a priest was necessary to salvation. It is true, that before that time, confession to a priest was usual, and performed for the most part by him that confessed, in writing. But that use was taken away about the time of King Edward III, and priests commanded to take confessions from the mouth of the confitent: and men did generally believe, that without confession and absolution before their departure out of the world, they could not be saved; and having absolution from a priest, that they could not be damned. You understand by this, how much every man would stand in awe of the Pope and clergy,

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more than they would of the King; and what inconvenience it is to a state for their subjects to confess their secret thoughts to spies.

B. Yes, as much as eternal torture is more terrible than death, so much they would fear the clergy more than the King.

A. And though perhaps the Roman clergy will not maintain, that a priest hath power to remit sins absolutely, but only with a condition of repentance, yet the people were never so instructed by them; but were left to believe, that whensoever they had absolution, their precedent sins were all discharged, when their penance, which they took for repentance, was performed. Within the same time began the article of transubstantiation. For it had been disputed a long time before, in what manner a man did eat the body of our Saviour Jesus Christ, as being a point very difficult for a man to conceive and imagine clearly; but now it was made very clear, that the bread was transubstantiated into Christ's body, and so was become no more bread, but flesh.

B. It seems then that Christ had many bodies, and was in as many places at once, as there were communicants. I think the priests then were so wanton, as to insult upon the dulness, not only of common people, but also of kings and their councillors.

A. I am now in a narration, not in a disputation; and therefore I would have you at this time to consider nothing else, but what effect this doctrine would work upon kings and their subjects, in relation to the clergy, who only were able of a piece of bread to make our Saviour's body, and thereby at the hour of death to save their souls.

B. For my part, it would have an effect on me, to make me think them gods, and to stand in awe of them as of God himself, if he were visibly present.

A. Besides these, and other articles tending to the upholding of the Pope's authority, they had many fine points in their ecclesiastical polity, conducing to the same end; of which I will mention only such as were established within the same time. For then it was the order came up of preaching friars, that wandered up and down, with power to preach in what congregation they pleased, and were sure enough to instil into the people nothing that might lessen the obedience to the Church of Rome; but, on the contrary, whatsoever might give advantage to it against the civil power. Besides, they privately insinuated themselves with women and men of weak judgment, confirming their adherence to the Pope, and urging them, in the time of their sickness, to be beneficial to it by contribution of money, or building religious houses, or pious works and necessary for the remission of their sins.

B. I do not remember that I have read of any kingdom or state in the world, where liberty was given to any private man to call the people together, and make orations frequently to them, or at all, without first making the state acquainted, except only in Christendom. I believe the heathen Kings foresaw, that a few such orators would be able to make a great sedition. Moses did indeed command to read the Scriptures and expound them in the Synagogues every Sabbath-day. But the Scriptures then were nothing else but the laws of the nation, delivered unto them by Moses himself. And I be-

PART I. lieve it would do no hurt, if the laws of England also were often read and expounded in the several congregations of Englishmen, at times appointed, that they may know what to do; for they know already what to believe.

A. I think that neither the preaching of friars nor monks, nor of parochial priests, tended to teach men what, but whom to believe. For the power of the mighty hath no foundation but in the opinion and belief of the people. And the end which the Pope had in multiplying sermons, was no other but to prop and enlarge his own authority over all Christian Kings and States.

Within the same time, that is, between the time of the Emperor Charles the Great and of King Edward the Third of England, began their second polity; which was, to bring religion into an art, and thereby to maintain all the decrees of the Roman Church by disputation; not only from the Scriptures, but also from the philosophy of Aristotle, both moral and natural. And to that end the Pope exhorted the said Emperor by letter, to erect schools of all kinds of literature; and from thence began the institution of universities; for not long after, the universities began in Paris and in Oxford. It is true, that there were schools in England before that time, in several places, for the instruction of children in the Latin tongue, that is to say, in the tongue of the Church. But for an university of learning, there was none erected till that time; though it be not unlikely there might be then some that taught philosophy, logic, and other arts, in divers monasteries, the monks having little else to do but to study. After some colleges were built to that pur-

pose, it was not long time before many more were added to them, by the devotion of princes and bishops, and other wealthy men: and the discipline therein was confirmed by the Popes that then were; and abundance of scholars sent thither by their friends to study, as to a place from whence the way was open and easy to preferment both in Church and Commonwealth. The profit the Church of Rome expected from them, and in effect received, was the maintenance of the Pope's doctrine, and of his authority over kings and their subjects, by school-divines; who striving to make good many points of faith incomprehensible, and calling in the philosophy of Aristotle to their assistance, wrote great books of school-divinity, which no man else, nor they themselves, were able to understand; as any man may perceive that shall consider the writings of Peter Lombard, or Scotus, or of him that wrote commentaries upon him, or of Suarez, or any other school-divine of later times. Which kind of learning nevertheless hath been much admired by two sorts of men, otherwise prudent enough. The one of which sorts were of those that were already devoted and really affectionate to the Roman Church; for they believed the doctrine before, but admired the arguments because they understood them not, and yet found the conclusions to their mind. The other sort were negligent men, that had rather admire with others, than take the pains to examine. So that all sorts of people were fully resolved, that both the doctrine was true, and the Pope's authority no more than what was due to him.

B. I see that a Christian king, or state, how well soever provided he be of money and arms, where

PART I. the Church of Rome hath such authority, will have but a hard match of it, for want of men. For their subjects will hardly be drawn into the field and fight with courage against their consciences.

A. It is true that great rebellions have been raised by Church-men in the Pope's quarrel against kings, as in England against King John, and in France against King Henry IV. Wherein the Kings had a more considerable part on their sides, than the Pope had on his; and shall always have so, if they have money. For there are but few whose consciences are so tender as to refuse money when they want it. But the great mischief done to kings upon pretence of religion is, when the Pope gives power to one king to invade another.

B. I wonder how King Henry the Eighth could then so utterly extinguish the authority of the Pope in England, and that without any rebellion at home, or any invasion from abroad.

A. First, the priests, monks, and friars, being in the height of their power, were now for the most part grown insolent and licentious; and thereby the force of their arguments was now taken away by the scandal of their lives, which the gentry and men of good education easily perceived: and the Parliament consisting of such persons, were therefore willing to take away their power: and generally the common people, which from a long custom had been in love with Parliaments, were not displeased therewith. Secondly, the doctrine of Luther beginning a little before, was now by a great many men of the greatest judgment so well received, as that there was no hope to restore the Pope to his power by rebellion. Thirdly, the revenue of abbeys

and all other religious houses, falling thereby into the King's hands, and by him being disposed of to the most eminent gentlemen in every county, could not but make them do their best to confirm themselves in the possession of them. Fourthly, King Henry was of a nature quick and severe in the punishing of such as should be the first to oppose his designs. Lastly, as to invasion from abroad, in case the Pope had given the kingdom to another prince, it had been in vain; for England is another manner of kingdom than Navarre. Besides, the French and Spanish forces were employed at that time one against another: and though they had been at leisure, they would have found perhaps no better success than the Spaniards found afterwards in 1588. Nevertheless, notwithstanding the insolence, avarice, and hypocrisy of the then clergy, and notwithstanding the doctrine of Luther, if the Pope had not provoked the King by endeavouring to cross his marriage with his second wife, his autho rity might have remained in England till there had risen some other quarrel.

B. Did not the bishops, that then were, and had taken an oath, wherein was, amongst other things, that they should defend and maintain the legal rights of St. Peter: (the words are, *Regalia Sancti Petri*, which nevertheless some have said are *regulas Sancti Petri*, that is to say, St. Peter's rules or doctrine; and that the clergy afterward did read it, being perhaps written in short-hand, by a mistake to the Pope's advantage *regalia*): did not, I say, the bishops oppose that Act of Parliament against the Pope, and against the taking of the oath of supremacy?

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A. No, I do not find that the bishops did many of them oppose the King; for having no power without him, it had been great imprudence to provoke his anger. There was besides a controversy in those times between the Pope and the bishops, most of which did maintain that they exercised their jurisdiction episcopal in the right of God, as immediately as the Pope himself did exercise the same over the whole Church. And because they saw that by this Act of the King in Parliament they were to hold their power no more of the Pope, and never thought of holding it of the King, they were perhaps better content to let that Act of Parliament pass. In the reign of King Edward VI the doctrine of Luther had taken so great root in England, that they threw out also a great many of the Pope's new articles of faith; which Queen Mary succeeding him restored again, together with all that had been abolished by Henry VIII, saving that which could not be restored, the religious houses; and the bishops and clergy of King Edward were partly burnt for heretics, partly fled, and partly recanted. And they that fled betook themselves to those places beyond sea, where the reformed religion was either protected or not persecuted; who, after the decease of Queen Mary, returned again to favour and preferment under Queen Elizabeth, that restored the religion of her brother King Edward. And so it hath continued till this day, excepting the interruption made in this late rebellion of the presbyterians and other democratical men. But though the Romish religion were now cast out by the law, yet there were abundance of people, and many of them of the nobility, that still retained the

religion of their ancestors, who as they were not much molested in points of conscience, so they were not by their own inclination very troublesome to the civil government; but by the secret practice of the Jesuits and other emissaries of the Roman Church, they were made less quiet than they ought to have been; and some of them to venture on the most horrid act that ever had been heard of before, I mean the Gunpowder Treason. And upon that account, the Papists of England have been looked upon as men that would not be sorry for any disorders here that might possibly make way to the restoring of the Pope's authority. And therefore I named them for one of the distempers of the state of England in the time of our late King Charles.

B. I see that Monsieur Mornay du Plessis, and Dr. Morton, Bishop of Durham, writing of the progress of the Pope's power, and intituling their books, one of them, *The Mystery of Iniquity*, the other, *The Grand Imposture*, were both in the right. For I believe there was never such another cheat in the world, and I wonder that the Kings and States of Christendom never perceived it.

A. It is manifest they did perceive it. How else durst they make war against the Pope, and some of them take him out of Rome itself and carry him away prisoner? But if they would have freed themselves from his tyranny, they should have agreed together, and made themselves every one, as Henry VIII did, head of the Church within their own respective dominions. But not agreeing, they let his power continue, every one hoping to make use of it, when there should be cause, against his neighbour.

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B. Now, as to that other distemper by Presbyterians, how came their power to be so great, being of themselves, for the most part, but so many poor scholars?

A. This controversy between the Papist and the Reformed Churches, could not choose but make every man, to the best of his power, examine by the Scriptures, which of them was in the right; and to that end they were translated into vulgar tongues; whereas before, the translation of them was not allowed, nor any man to read them but such as had express license so to do. For the Pope did concerning the Scriptures the same that Moses did concerning Mount Sinai. Moses suffered no man to go up to it to hear God speak or gaze upon him, but such as he himself took with him; and the Pope suffered none to speak with God in the Scriptures, that had not some part of the Pope's spirit in him, for which he might be trusted.

B. Certainly Moses did therein very wisely, and according to God's own commandment.

A. No doubt of it, and the event itself hath made it appear so. For after the Bible was translated into English, every man, nay, every boy and wench, that could read English, thought they spoke with God Almighty, and understood what he said, when by a certain number of chapters a day they had read the Scriptures once or twice over. The reverence and obedience due to the Reformed Church here, and to the bishops and pastors therein, was cast off, and every man became a judge of religion, and an interpreter of the Scriptures to himself.

B. Did not the Church of England intend it should be so? What other end could they have

in recommending the Bible to me, if they did not mean I should make it the rule of my actions? Else they might have kept it, though open to themselves, to me sealed up in Hebrew, Greek, and Latin, and fed me out of it in such measure as had been requisite for the salvation of my soul and the Church's peace.

A. I confess this licence of interpreting the Scripture was the cause of so many several sects, as have lain hid till the beginning of the late King's reign, and did then appear to the disturbance of the commonwealth. But to return to the story. Those persons that fled for religion in the time of Queen Mary, resided, for the most part, in places where the Reformed religion was professed and governed by an assembly of ministers; who also were not a little made use of, for want of better statesmen, in points of civil government. Which pleased so much the English and Scotch Protestants that lived amongst them, that at their return they wished there were the same honour and reverence given to the ministry in their own countries. In Scotland, King James being then young, soon with the help of some of the powerful nobility they brought it to pass. Also they that returned into England in the beginning of the reign of Queen Elizabeth, endeavoured the same here, but could never effect it till this last rebellion, nor without the aid of the Scots. And it was no sooner effected, but they were defeated again by the other sects, which, by the preaching of the Presbyterians and private interpretation of Scripture, were grown numerous.

B. I know indeed that in the beginning of the late war, the power of the Presbyterians was so

PART I. very great, that, not only the citizens of London were almost all of them at their devotion, but also the greatest part of all other cities and market-towns of England. But you have not yet told me by what art and what degrees they became so strong.

A. It was not their own art alone that did it, but they had the concurrence of a great many gentlemen, that did no less desire a popular government in the civil state than these ministers did in the Church. And as these did in the pulpit draw the people to their opinions, and to a dislike of the Church-government, Canons, and Common-prayer-book, so did the other make them in love with democracy by their harangues in the Parliament, and by their discourses and communication with people in the country, continually extolling liberty and inveighing against tyranny, leaving the people to collect of themselves that this tyranny was the present government of the state. And as the Presbyterians brought with them into their churches their divinity from the universities, so did many of the gentlemen bring their politics from thence into the Parliament; but neither of them did this very boldly in the time of Queen Elizabeth. And though it be not likely that all of them did it out of malice, but many of them out of error, yet certainly the chief leaders were ambitious ministers and ambitious gentlemen; the ministers envying the authority of bishops, whom they thought less learned; and the gentlemen envying the privy-council, whom they thought less wise than themselves. For it is a hard matter for men, who do all think highly of their own wits, when they have also acquired the learn-

ing of the university, to be persuaded that they want any ability requisite for the government of a commonwealth, especially having read the glorious histories and the sententious politics of the ancient popular governments of the Greeks and Romans, amongst whom kings were hated and branded with the name of tyrants, and popular government (though no tyrant was ever so cruel as a popular assembly) passed by the name of liberty. The Presbyterian ministers, in the beginning of the reign of Queen Elizabeth, did not, because they durst not, publicly preach against the discipline of the Church. But not long after, by the favour perhaps of some great courtier, they went abroad preaching in most of the market-towns of England, as the preaching friars had formerly done, upon working-days in the morning; in which sermons, these and others of the same tenets, that had charge of souls, both by the manner and matter of their preaching, applied themselves wholly to the winning of the people to a liking of their doctrines and good opinion of their persons.

And first, for the manner of their preaching; they so framed their countenance and gesture at their entrance into the pulpit, and their pronunciation both in their prayer and sermon, and used the Scripture phrase (whether understood by the people or not), as that no tragedian in the world could have acted the part of a right godly man better than these did; insomuch that a man unacquainted with such art, could never suspect any ambitious plot in them to raise sedition against the state, as they then had designed; or doubt that the vehemence of their voice (for the same words with

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the usual pronunciation had been of little force) and forcedness of their gesture and looks, could arise from anything else but zeal to the service of God. And by this art they came into such credit, that numbers of men used to go forth of their own parishes and towns on working-days, leaving their calling, and on Sundays leaving their own churches, to hear them preach in other places, and to despise their own and all other preachers that acted not so well as they. And as for those ministers that did not usually preach, but instead of sermons did read to the people such homilies as the Church had appointed, they esteemed and called them dumb dogs.

Secondly, for the matter of their sermons, because the anger of the people in the late Roman usurpation was then fresh, they saw there could be nothing more gracious with them than to preach against such other points of the Romish religion as the bishops had not yet condemned; that so receding further from popery than they did, they might with glory to themselves leave a suspicion on the bishops, as men not yet well purged from idolatry.

Thirdly, before their sermons, their prayer was or seemed to be *extempore*, which they pretended to be dictated by the spirit of God within them, and many of the people believed or seemed to believe it. For any man might see, that had judgment, that they did not take care beforehand what they should say in their prayers. And from hence came a dislike of the common-prayer-book, which is a set form, premeditated, that men might see to what they were to say *amen*.

Fourthly, they did never in their sermons, or but lightly, inveigh against the lucrative vices of men

of trade or handicraft; such as are feigning, lying, cozening, hypocrisy, or other uncharitableness, except want of charity to their pastors and to the faithful: which was a great ease to the generality of citizens and the inhabitants of market-towns, and no little profit to themselves.

Fifthly, by preaching up an opinion that men were to be assured of their salvation by the testimony of their own private spirit, meaning the Holy Ghost dwelling within them. And from this opinion the people that found in themselves a sufficient hatred towards the Papists, and an ability to repeat the sermons of these men at their coming home, made no doubt but that they had all that was necessary, how fraudulently and spitefully soever they behaved themselves to their neighbours that were not reckoned amongst the saints, and sometimes to those also.

Sixthly, they did, indeed, with great earnestness and severity, inveigh often against two sins, carnal lusts and vain swearing; which, without question, was very well done. But the common people were thereby inclined to believe, that nothing else was sin, but that which was forbidden in the third and seventh commandments (for few men do understand by the name of lust any other concupiscence, than that which is forbidden in that seventh commandment; for men are not ordinarily said to lust after another man's cattle, or other goods or possessions): and therefore never made much scruple of the acts of fraud and malice, but endeavoured to keep themselves from uncleanness only, or at least from the scandal of it. And, whereas they did, both in their sermons and

PART I. writings, maintain and inculcate, that the very first motions of the mind, that is to say, the delight men and women took in the sight of one another's form, though they checked the proceeding thereof so that it never grew up to be a design, was nevertheless a sin, they brought young men into desperation and to think themselves damned, because they could not (which no man can, and is contrary to the constitution of nature) behold a delightful object without delight. And by this means they became confessors to such as were thus troubled in conscience, and were obeyed by them as their spiritual doctors in all cases of conscience.

B. Yet divers of them did preach frequently against oppression.

A. It is true, I had forgot that; but it was before such as were free enough from it; I mean the common people, who would easily believe themselves oppressed, but never oppressors. And therefore you may reckon this among their artifices, to make the people believe they were oppressed by the King, or perhaps by the bishops, or both; and incline the meaner sort to their party afterwards, when there should be occasion. But this was but sparingly done in the time of Queen Elizabeth, whose fear and jealousy they were afraid of. Nor had they as yet any great power in the Parliament-house, whereby to call in question her prerogative by petitions of right and other devices, as they did afterwards, when democratical gentlemen had received them into their counsels for the design of changing the government from monarchical to popular, which they called liberty.

B. Who would think that such horrible designs

as these could so easily and so long remain covered with the cloak of godliness? For that they were most impious hypocrites, is manifest enough by the war these proceedings ended in, and by the impious acts in that war committed. But when began first to appear in Parliament the attempt of popular government, and by whom?

A. As to the time of attempting the change of government from monarchical to democratical, we must distinguish. They did not challenge the sovereignty in plain terms, and by that name, till they had slain the King; nor the rights thereof altogether by particular heads, till the King was driven from London by tumults raised in that city against him, and retired for the security of his person to York; where he had not been many days, when they sent unto him nineteen propositions, whereof above a dozen were demands of several powers, essential parts of the power sovereign. But before that time they had demanded some of them in a petition which they called a Petition of Right; which nevertheless the King had granted them in a former Parliament, though he deprived himself thereby, not only of the power to levy money without their consent, but also of his ordinary revenue by custom of tonnage and poundage, and of the liberty to put into custody such men as he thought likely to disturb the peace and raise sedition in the kingdom. As for the men that did this, it is enough to say they were members of the last Parliament, and of some other Parliaments in the beginning of King Charles and the end of King James his reign; to name them all is not necessary, further than the story shall require. Most of them were

PART I. members of the House of Commons; some few also, of the Lords; but all, such as had a great opinion of their sufficiency in politics, which they thought was not sufficiently taken notice of by the King.

B. How could the Parliament, when the King had a great navy, and a great number of trained soldiers, and all the magazines of ammunition in his power, be able to begin the war?

A. The King had these things indeed in his right; but that signifies little, when they that had the custody of the navy and magazines, and with them all the trained soldiers, and in a manner all his subjects, were, by the preaching of Presbyterian ministers, and the seditious whisperings of false and ignorant politicians, made his enemies; and when the King could have no money but what the Parliament should give him, which you may be sure should not be enough to maintain his regal power, which they intended to take from him. And yet, I think, they never would have ventured into the field, but for that unlucky business of imposing upon the Scots, who were all Presbyterians, our book of Common-prayer. For I believe the English would never have taken well that the Parliament should make war upon the King, upon any provocation, unless it were in their own defence, in case the King should first make war upon them; and, therefore, it behoved them to provoke the King, that he might do something that might look like hostility. It happened in the year 1637, that the King, by the advice, as it is thought, of the Archbishop of Canterbury, sent down a book of Common-prayer into Scotland, not differing in substance from ours, nor much in words besides

the putting of the word Presbyter for that of Minister, commanding it to be used, for conformity to this kingdom, by the ministers there, for an ordinary form of Divine service. This being read in the church at Edinburgh, caused such a tumult there, that he that read it had much ado to escape with his life; and gave occasion to the greatest part of the nobility and others to enter, by their own authority, into a covenant amongst themselves, which impudently they called a covenant with God, to put down episcopacy, without consulting with the King: which they presently did, animated thereto by their own confidence, or by assurance from some of the democratical Englishmen that in former Parliaments had been the greatest opposers of the King's interest, that the King would not be able to raise an army to chastise them without calling a Parliament, which would be sure to favour them. For the thing which those democraticals chiefly then aimed at, was to force the King to call a Parliament, which he had not done for ten years before, as having found no help, but hindrance to his designs in the Parliaments he had formerly called. Howsoever, contrary to their expectation, by the help of his better-affected subjects of the nobility and gentry, he made a shift to raise a sufficient army to have reduced the Scots to their former obedience, if it had proceeded to battle. And with this army he marched himself into Scotland; where the Scotch army was also brought into the field against him, as if they meant to fight. But then the Scotch sent to the King for leave to treat by commissioners on both sides; and the King, willing to avoid the destruction of his own subjects,

PART I. condescended to it. The issue was peace; and the King thereupon went to Edinburgh, and passed an Act of Parliament there to their satisfaction.

B. Did he not then confirm episcopacy?

A. No, but yielded to the abolishing of it: but by this means the English were crossed in their hope of a Parliament. But the said democraticals, formerly opposers of the King's interest, ceased not to endeavour still to put the two nations into a war; to the end the King might buy the Parliament's help at no less a price than sovereignty itself.

B. But what was the cause that the gentry and nobility of Scotland were so averse from the episcopacy? For I can hardly believe that their consciences were extraordinarily tender, nor that they were so very great divines, as to know what was the true Church-discipline established by our Saviour and his apostles; nor yet so much in love with their ministers, as to be over-ruled by them in the government either ecclesiastical or civil. For in their lives they were just as other men are, pursuers of their own interests and preferments, wherein they were not more opposed by the bishops than by their Presbyterian ministers.

A. Truly I do not know; I cannot enter into other men's thoughts, farther than I am led by the consideration of human nature in general. But upon this consideration I see first, that men of ancient wealth and nobility are not apt to brook, that poor scholars should (as they must, when they are made bishops) be their fellows. Secondly, that from the emulation of glory between the nations, they might be willing to see this nation afflicted by civil war, and might hope, by aiding the rebels here, to ac-

quire some power over the English, at least so far as to establish here the Presbyterian discipline; which was also one of the points they afterwards openly demanded. Lastly, they might hope for, in the war, some great sum of money, as a reward of their assistance, besides great booty, which they afterwards obtained. But whatsoever was the cause of their hatred to bishops, the pulling of them down was not all they aimed at: if it had, now that episcopacy was abolished by act of Parliament, they would have rested satisfied, which they did not. For after the King was returned to London, the English Presbyterians and democraticals, by whose favour they had put down bishops in Scotland, thought it reason to have the assistance of the Scotch for the pulling down of bishops in England. And in order thereunto, they might perhaps deal with the Scots secretly, to rest unsatisfied with that pacification, which they were before contented with. Howsoever it was, not long after the King was returned to London, they sent up to some of their friends at court a certain paper, containing, as they pretended, the articles of the said pacification; a false and scandalous paper, which was by the King's command burnt, as I have heard, publicly. And so both parties returned to the same condition they were in, when the King went down with his army.

B. And so there was a great deal of money cast away to no purpose. But you have not told me who was general of that army.

A. I told you the King was there in person. He that commanded under him was the Earl of Arundel, a man that wanted not either valour or judgment. But to proceed to battle or to treaty, was not in his power, but in the King's.

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B. He was a man of a most noble and loyal family, and whose ancestors had formerly given a great overthrow to the Scots, in their own country; and in all likelihood he might have given them the like now, if they had fought.

A. He might indeed: but it had been but a kind of superstition to have made him general upon that account, though many generals heretofore have been chosen for the good luck of their ancestors in like occasions. In the long war between Athens and Sparta, a general of the Athenians by sea won many victories against the Spartans; for which cause, after his death, they chose his son for general with ill success. The Romans that conquered Carthage by the valour and conduct of Scipio, when they were to make war again in Afric against Cæsar, chose another Scipio for general; a man valiant and wise enough, but he perished in the employment. And to come home to our own nation, the Earl of Essex made a fortunate expedition to Cadiz; but his son, sent afterwards to the same place, could do nothing. It is but a foolish superstition, to hope that God has entailed success in war upon a name or family.

B. After the pacification broken, what succeeded next?

A. The King sent Duke Hamilton with commission and instructions into Scotland, to call a Parliament there, and to use all the means he could otherwise; but all was to no purpose. For the Scots were now resolved to raise an army and to enter into England, to deliver, as they pretended, their grievances to his majesty in a petition; because the King, they said, being in the hands of evil councillors, they could not otherwise obtain their right.

But the truth is, they were animated to it by the democratical and Presbyterian English, with a promise of reward and hope of plunder. Some have said, that Duke Hamilton also did rather encourage them to, than deter them from, the expedition; as hoping by the disorder of the two kingdoms, to bring to pass that which he had formerly been accused to endeavour, to make himself King of Scotland. But I take this to have been a very uncharitable censure, upon so little ground to judge so hardly of a man, that afterwards lost his life in seeking to procure the liberty of the King his master. This resolution of the Scots to enter England being known, the King wanting money to raise an army against them, was now, as his enemies here wished, constrained to call a parliament, to meet at Westminster the 13th day of April 1640.

B. Methinks a Parliament of England, if upon any occasion, should furnish the King with money now in war against the Scots, out of an inveterate disaffection to that nation that had always anciently taken part with their enemies the French, and which always esteemed the glory of England for an abatement of their own.

A. It is indeed commonly seen that neighbour nations envy one another's honour, and that the less potent bears the greater malice; but that hinders them not from agreeing in those things which their common ambition leads them to. And therefore the King found not the more, but the less help from this Parliament: and most of the members thereof, in their ordinary discourses, seemed to wonder why the King should make a war upon Scotland; and in that Parliament sometimes called them *their*

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brethren the Scots. But instead of taking the King's business, which was the raising of money, into their consideration, they fell upon the redressing of grievances, and especially such ways of levying money as in the late intermission of Parliaments the King had been forced to use; such as were ship-money, for knighthood, and such other vails (as one may call them) of the regal office, which lawyers had found justifiable by the ancient records of the kingdom. Besides, they fell upon the actions of divers ministers of state, though done by the King's own command and warrant. Insomuch, that before they were to come to the business for which they were called, the money which was necessary for this war (if they had given any, as they never meant to do) had come too late. It is true, there was mention of a sum of money to be given the King, by way of bargain, for the relinquishing of his right to ship-money, and some other of his prerogatives, but so seldom, and without determining any sum, that it was in vain for the King to hope for any success; and therefore upon the 5th of May following he dissolved it.

B. Where then had the King money to raise and pay his army?

A. He was forced the second time to make use of the nobility and gentry, who contributed some more, some less, according to the greatness of their estates; but amongst them all they made up a very sufficient army.

B. It seems then that the same men, that crossed his business in the Parliament, now out of Parliament advanced it all they could. What was the reason of that?

A. The greatest part of the Lords in Parliament, and of the gentry throughout England, were more affected to monarchy than to a popular government, but so as not to endure to hear of the King's absolute power; which made them in time of Parliament easily to condescend to abridge it, and bring the government to a mixed monarchy, as they called it; wherein the absolute sovereignty should be divided between the King, the House of Lords, and the House of Commons.

B. But how, if they cannot agree?

A. I think they never thought of that; but I am sure they never meant the sovereignty should be wholly either in one or both houses. Besides, they were loath to desert the King, when he was invaded by foreigners; for the Scotch were esteemed by them as a foreign nation.

B. It is strange to me, that England and Scotland being but one island, and their language almost the same, and being governed by one King, should be thought foreigners to one another. The Romans were masters of many nations, and to oblige them the more to obey the edicts and laws sent unto them from the city of Rome, they thought fit to make them all Romans; and out of divers nations, as Spain, Germany, Italy, and France, to advance some, that they thought worthy, even to be senators of Rome, and to give every one of the common people the privileges of the city of Rome, by which they were protected from the contumelies of other nations where they resided. Why were not the Scotch and English in like manner united into one people?

A. King James at his first coming to the crown

PART I. of England did endeavour it, but could not prevail. But for all that, I believe the Scotch have now as many privileges in England as any nation had in Rome, of those which were so as you say made Romans. For they are all naturalized, and have right to buy land in England to themselves and their heirs.

B. It is true of them, that were born in Scotland after the time that King James was in possession of the kingdom of England.

A. There be very few now that were born before. But why have they a better right that were born after, than they that were born before?

B. Because they were born subjects to the King of England, and the rest not.

A. Were not the rest born subjects to King James? And was not he King of England?

B. Yes, but not then.

A. I understand not the subtilty of that distinction. But upon what law is that distinction grounded? Is there any statute to that purpose?

B. I cannot tell; I think not; but it is grounded upon equity.

A. I see little equity in this; that those nations that are bound to equal obedience to the same King, should not have equal privileges. And now seeing there be so very few born before King James's coming in, what greater privilege had those ingrafted Romans by their naturalization in the state of Rome, or in the state of England the English themselves, more than the Scotch?

B. Those Romans, when any of them were in Rome, had their voice in the making of laws.

A. And the Scotch have their Parliaments,

wherein their assent is required to the laws there made, which is as good. Have not many of the provinces of France their several parliaments and several constitutions? And yet they are all equally natural subjects of the King of France. And therefore for my part I think they were mistaken, both English and Scotch, in calling one another foreigners. Howsoever that be, the King had a very sufficient army, wherewith he marched towards Scotland; and by the time he was come to York, the Scotch army was drawn up to the frontiers and ready to march into England; which also they presently did; giving out all the way, that their march should be without damage to the country, and that their errand was only to deliver a petition to the King, for the redress of many pretended injuries they had received from such of the court, whose counsel the King most followed. So they passed through Northumberland quietly, till they came to a ford in the river of Tyne, a little above Newcastle, where they found some little opposition from a party of the King's army sent thither to stop them, whom the Scotch easily mastered; and as soon as they were over, seized upon Newcastle, and coming further on, upon the city of Durham; and sent to the King to desire a treaty, which was granted; and the commissioners on both sides met at Ripon. The conclusion was, that all should be referred to the Parliament, which the King should call to meet at Westminster on the 3rd of November following, being in the same year 1640; and thereupon the King returned to London.

B. So the armies were disbanded?

A. No; the Scotch army was to be defrayed by

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B. So in effect both the armies were maintained at the King's charge, and the whole controversy to be decided by a Parliament almost wholly Presbyterian, and as partial to the Scotch as themselves could have wished.

A. And yet for all this they durst not presently make war upon the King: there was so much yet left of reverence to him in the hearts of the people, as to have made them odious, if they had declared what they intended. They must have some colour or other to make it believed that the King made war first upon the Parliament. And besides, they had not yet sufficiently disgraced him in sermons and pamphlets, nor removed from about him those they thought could best counsel him. Therefore they resolved to proceed with him like skilful hunters; first to single him out, by men disposed in all parts to drive him into the open field; and then in case he should but seem to turn head, to call that a making of war against the Parliament.

And first they called in question such as had either preached or written in defence of any of those rights, which, belonging to the Crown, they meant to usurp, and take from the King to themselves: whereupon some few preachers and writers were imprisoned, or forced to fly. The King not protecting these, they proceeded to call in question some of the King's own actions in his ministers, whereof they imprisoned some, and some went beyond sea. And whereas certain persons, having endeavoured by books and sermons to raise sedition,

and committed other crimes of high nature, had therefore been censured by the King's council in the Star-chamber, and imprisoned; the Parliament by their own authority, to try, it seems, how the King and the people would take it, (for their persons were inconsiderable), ordered their setting at liberty; which was accordingly done, with great applause of the people, that flocked about them in London, in manner of a triumph. This being done without resistance, the King's right to ship-money—

B. Ship-money! what's that?

A. The Kings of England, for the defence of the sea, had power to tax all the counties of England, whether they were maritime or not, for the building and furnishing of ships; which tax the King had then lately found cause to impose, and the Parliament exclaimed against it as an oppression. And by one of their members that had been taxed but 20*s.* (mark the oppression; a Parliament-man of 500*l.* a year, land-taxed at 20*s.*!) they were forced to bring it to a trial at law, he refusing payment; and he was cast. Again, when all the judges of Westminster were demanded their opinions concerning the legality of it, of twelve that there are, it was judged legal by ten; for which though they were not punished, yet they were affrighted by the Parliament.

B. What did the Parliament mean, when they did exclaim against it as illegal? Did they mean it was against statute-law, or against the judgments of lawyers given heretofore, which are commonly called reports; or did they mean it was against equity, which I take to be the same with the law of nature?

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A. It is a hard matter, or rather impossible, to know what other men mean, especially if they be crafty: but sure I am, equity was not their ground for this pretence of immunity from contributing to the King but at their own pleasure. For when they have laid the burthen of defending the whole kingdom, and governing it, upon any person whatsoever, there is very little equity he should depend on others for the means of performing it; or if he do, they are his Sovereign, not he theirs. And as for the common law contained in reports, they have no force but what the King gives them. Besides, it were more unreasonable, that a corrupt or foolish judge's unjust sentence should by any time, how long soever, obtain the authority and force of a law. But amongst the statute laws there is one, called Magna Charta, or the Great Charter of the liberties of Englishmen, in which there is one article, wherein a King heretofore hath granted that no man shall be distrained, that is, have his goods taken from him, otherwise than by the law of the land.

B. Is not that a sufficient ground for their purpose?

A. No: that leaves us in the same doubt, which you think it clears. For where was that law of the land then? Did they mean another Magna Charta, that was made by some King more ancient yet? No: that statute was made, not to exempt any man from payments to the public, but for securing every man from such as abused the King's power by surreptitiously obtaining the King's warrants, to the oppressing of those against whom he had any suit in law. But it was conducing to the

ends of some rebellious spirits in this Parliament, to have it interpreted in the wrong sense, and suitable enough to the understanding of the rest, or most part of them, to let it pass.

B. You make the members of that Parliament very simple men; and yet the people chose them for the wisest of the land.

A. If craft be wisdom, they were wise enough. But wise, as I define it, is he that knows how to bring his business to pass, without the assistance of knavery and ignoble shifts, by the sole strength of his good contrivance. A fool may win from a better gamester by the advantage of false dice, and packing of cards.

B. According to your definition, there be few wise men now-a-days. Such wisdom is a kind of gallantry, that few are brought up to, and most think folly. Fine cloaths, great feathers, civility towards men that will not swallow injuries, and injury towards them that will, is the present gallantry. But when the Parliament afterwards, having gotten the power into their hands, levied money for their own use; what said the people to that?

A. What else, but that it was legal and to be paid, as being imposed by consent of Parliaments.

B. I have heard often that they ought to pay what was imposed by consent of Parliaments to the use of the King, but to their own use never before. I see by this, it is easier to gull the multitude, than any one man amongst them. For what one man, that has not his natural judgment depraved by accident, could be so easily cozened in a matter that concerns his purse, had he not been passionately carried away by the rest to change of govern-

PART I. ment, or rather to a liberty of every one to govern himself?

A. Judge then, what kind of men such a multitude of ignorant people were like to elect for their burgesses and knights of shires.

B. I can make no other judgment, but that they who were then elected, were just such as had been elected for former Parliaments, and as are like to be elected for Parliaments to come. For the common people have been, and always will be, ignorant of their duty to the public, as never meditating any thing but their particular interest; in other things following their immediate leaders; which are either the preachers, or the most potent of the gentlemen that dwell amongst them: as common soldiers for the most part follow their immediate captains, if they like them. If you think the late miseries have made them wiser, that will quickly be forgot, and then we shall be no wiser than we were.

A. Why may not men be taught their duty, that is, the science of just and unjust, as divers other sciences have been taught, from true principles and evident demonstration; and much more easily than any of those preachers and democratical gentlemen could teach rebellion and treason?

B. But who can teach what none have learned? Or, if any man hath been so singular, as to have studied the science of justice and equity; how can he teach it safely, when it is against the interest of those that are in possession of the power to hurt him?

A. The rules of just and unjust sufficiently demonstrated, and from principles evident to the meanest capacity, have not been wanting; and not-

withstanding the obscurity of their author, have shined, not only in this, but also in foreign countries, to men of good education. But they are few, in respect of the rest of the men, whereof many cannot read; many, though they can, have no leisure; and of them that have leisure, the greatest part have their minds wholly employed and taken up by their private businesses or pleasures. So that it is impossible that the multitude should ever learn their duty, but from the pulpit and upon holidays; but then, and from thence, it is, that they learned their disobedience. And, therefore, the light of that doctrine has been hitherto covered and kept under here by a cloud of adversaries, which no private man's reputation can break through, without the authority of the Universities. But out of the Universities, came all those preachers that taught the contrary. The Universities have been to this nation, as the wooden horse was to the Trojans.

B. Can you tell me why and when the Universities here, and in other places, first began?

A. It seems, for the time, they began in the reign of the Emperor Charles the Great. Before which time, I doubt not, but that there were many grammar schools for the Latin tongue, which was the natural language of the Roman Church; but for Universities, that is to say, schools for the sciences in general, and especially for divinity, it is manifest that the institution of them was recommended by the Pope's letter to the Emperor Charles the Great, and recommended further by a Council held in his time, I think, at Chalons-sur-Saone; and not long after was erected an University at Paris, and the

PART I. college called University College at Oxford. And so by degrees several bishops, noblemen, and rich men, and some Kings and Queens, contributing thereunto, the Universities obtained at last their present splendour.

B. But what was the Pope's design in it?

A. What other design was he like to have, but what you heard before, the advancement of his own authority in the countries where the Universities were erected? There they learned to dispute for him, and with unintelligible distinctions to blind men's eyes, whilst they encroached upon the rights of kings. And it was an evident argument of that design, that they fell in hand with the work so quickly. For the first Rector of the University of Paris, as I have read somewhere, was Peter Lombard, who first brought in them the learning called School-divinity; and was seconded by John Scot of Duns, who lived in, or near the same time; whom any ingenious reader, not knowing what was the design, would judge to have been two of the most egregious blockheads in the world, so obscure and senseless are their writings. And from these the schoolmen that succeeded, learnt the trick of imposing what they list upon their readers, and declining the force of true reason by verbal forks; I mean, distinctions that signify nothing, but serve only to astonish the multitude of ignorant men. As for the understanding readers, they were so few, that these new sublime doctors cared not what they thought. These schoolmen were to make good all the articles of faith, which the Popes from time to time should command to be believed: amongst which, there were very many inconsistent with the

rights of kings, and other civil sovereigns, as asserting to the Pope all authority whatsoever they should declare to be necessary *in ordine ad spiritualia*, that is to say, in order to religion.

From the Universities also it was, that all preachers proceeded, and were poured out into city and country, to terrify the people into an absolute obedience to the Pope's canons and commands, which, for fear of weakening kings and princes too much, they durst not yet call laws.

From the Universities it was, that the philosophy of Aristotle was made an ingredient in religion, as serving for a salve to a great many absurd articles, concerning the nature of Christ's body, and the estate of angels and saints in heaven; which articles they thought fit to have believed, because they bring, some of them profit, and others reverence to the clergy, even to the meanest of them. For when they shall have made the people believe that the meanest of them can make the body of Christ; who is there that will not both show them reverence, and be liberal to them or to the Church, especially in the time of their sickness, when they think they make and bring unto them their Saviour?

B. But, what advantage to them, in these impostures, was the doctrine of Aristotle?

A. They have made more use of his obscurity than of his doctrine. For none of the ancient philosophers' writings are comparable to those of Aristotle, for their aptness to puzzle and entangle men with words, and to breed disputation, which must at last be ended in the determination of the Church of Rome. And yet in the doctrine of Aristotle, they made use of many points; as, first, the doctrine of separated essences.

PART I.

B. What are separated essences?

A. Separated beings.

B. Separated from what?

A. From every thing that is.

B. I cannnot understand the being of any thing, which I understand not to be. But what can they make of that?

A. Very much, in questions concerning the nature of God, and concerning the estate of man's soul after death, in heaven, hell, and purgatory; by which you and every man know, how great obedience, and how much money they gain from the common people. Whereas Aristotle holdeth the soul of man to be the first giver of motion to the body, and consequently to itself; they make use of that in the doctrine of free will. What, and how they gain by that, I will not say. He holdeth forth, that there be many things that come to pass in this world from no necessity of causes, but mere contingency, casuality, and fortune.

B. Methinks, in this they make God stand idle, and to be a mere spectator of the games of fortune; for what God is the cause of, must needs come to pass, and, in my opinion, nothing else. But, because there must be some ground for the justice of the eternal torment of the damned; perhaps it is this, that men's wills and propensions are not, they think, in the hands of God, but of themselves; and in this also I see somewhat conducing to the authority of the Church.

A. This is not much; nor was Aristotle of such credit with them, but that when his opinion was against theirs, they could slight him. Whatsoever he says is impossible in nature, they can

prove well enough to be possible, from the Almighty power of God, who can make many bodies to be in one and the self-same place, and one body to be in many places at the same time, if the doctrine of transubstantiation require it, though Aristotle deny it. I like not the design of drawing religion into an art, whereas it ought to be a law; and though not the same in all countries, yet in every country indisputable; nor that they teach it not, as arts ought to be taught, by shewing first the meaning of their terms, and then deriving from them the truth they would have us believe: nor that their terms are for the most part unintelligible; though, to make it seem rather want of learning in the reader, than want of fair dealing in themselves, they are, for the most part, Latin and Greek words, wryed a little at the point, towards the native language of the several countries where they are used. But that which is most intolerable is, that all clerks are forced to make as if they believed them, if they mean to have any Church preferment, the keys whereof are in the Pope's hands; and the common people, whatsoever they believe of those subtile doctrines, are never esteemed better sons of the Church for their learning. There is but one way there to salvation; that is, extraordinary devotion and liberality to the Church, and readiness for the Church's sake, if it be required, to fight against their natural and lawful sovereigns.

B. I see what use they make of Aristotle's logic, physics, and metaphysics; but I see not yet how his politics can serve their turn.

A. Nor I. It has, I think, done them no good, though it has done us here much hurt by accident.

PART I. For men, grown weary at last of the insolence of the priests, and examining the truth of these doctrines that were put upon them, began to search the sense of the Scriptures, as they are in the learned languages; and consequently studying Greek and Latin, became acquainted with the democratical principles of Aristotle and Cicero, and from the love of their eloquence fell in love with their politics, and that more and more, till it grew into the rebellion we now talk of, without any other advantage to the Roman Church but that it was a weakening to us, whom, since we broke out of their net in the time of Henry VIII, they have continually endeavoured to recover.

B. What have they gotten by the teaching of Aristotle's ethics?

A. It is some advantage to them, that neither the morals of Aristotle, nor of any other, have done them any harm, nor us any good. Their doctrines have caused a great deal of dispute concerning virtue and vice, but no knowledge of what they are, nor any method of obtaining virtue nor of avoiding vice. The end of moral philosophy is, to teach men of all sorts their duty, both to the public and to one another. They estimate virtue, partly by a mediocrity of the passions of men, and partly by that that they are praised. Whereas, it is not the much or little praise that makes an action virtuous, but the cause; nor much or little blame that makes an action vicious, but its being unconformable to the laws in such men as are subject to the law, or its being unconformable to equity or charity in all men whatsoever.

B. It seems you make a difference between the ethics of subjects, and the ethics of sovereigns.

A. So I do. The virtue of a subject is comprehended wholly in obedience to the laws of the commonwealth. To obey the laws, is justice and equity, which is the law of nature, and, consequently, is civil law in all nations of the world; and nothing is injustice or iniquity, otherwise, than it is against the law. Likewise, to obey the laws, is the prudence of a subject; for without such obedience the commonwealth (which is every subject's safety and protection) cannot subsist. And though it be prudence also in private men, justly and moderately to enrich themselves, yet craftily to withhold from the public or defraud it of such part of their wealth, as is by law required, is no sign of prudence, but of want of knowledge of what is necessary for their own defence.

The virtues of sovereigns are such as tend to the maintenance of peace at home, and to the resistance of foreign enemies. Fortitude is a royal virtue; and though it be necessary in such private men as shall be soldiers, yet, for other men, the less they dare, the better it is both for the commonwealth and for themselves. Frugality (though perhaps you will think it strange) is also a royal virtue: for it increases the public stock, which cannot be too great for the public use, nor any man too sparing of what he has in trust for the good of others. Liberality also is a royal virtue: for the commonwealth cannot be well served without extraordinary diligence and service of ministers, and great fidelity to their Sovereign;

PART I. who ought therefore to be encouraged, and especially those that do him service in the wars. In sum, all actions and habits are to be esteemed good or evil by their causes and usefulness in reference to the commonwealth, and not by their mediocrity, nor by their being commended. For several men praise several customs, and that which is virtue with one, is blamed by others; and, contrarily, what one calls vice, another calls virtue, as their present affections lead them.

B. Methinks you should have placed among the virtues that, which, in my opinion, is the greatest of all virtues, religion.

A. So I have, though, it seems, you did not observe it. But whither do we digress from the way we were in?

B. I think you have not digressed at all; for I suppose, your purpose was, to acquaint me with the history, not so much of those actions that passed in the time of the late troubles, as of their causes, and of the councils and artifice by which they were brought to pass. There be divers men that have written the history, out of whom I might have learned what they did, and somewhat also of the contrivance; but I find little in them of what I would ask. Therefore, since you were pleased to enter into this discourse at my request, be pleased also to inform me after my own method; and for the danger of confusion that may arise from that, I will take care to bring you back to the place from whence I drew you; for I well remember where it was.

A. Well then, to your question concerning religion, inasmuch as I told you, that all virtue is

comprehended in obedience to the laws of the commonwealth, whereof religion is one, I have placed religion amongst the virtues.

B. Is religion then the law of a commonwealth?

A. There is no nation in the world, whose religion is not established, and receives not its authority from the laws of that nation. It is true, that the law of God receives no evidence from the laws of men. But because men can never by their own wisdom come to the knowledge of what God hath spoken and commanded to be observed, nor be obliged to obey the laws whose author they know not, they are to acquiesce in some human authority or other. So that the question will be, whether a man ought in matter of religion, that is to say, when there is question of his duty to God and the King, to rely upon the preaching of his fellow-subjects or of a stranger, or upon the voice of the law?

B. There is no great difficulty in that point. For there are none that preach here or anywhere else, or at least ought to preach, but such as have authority so to do from him or them that have the sovereign power. So that if the King gives us leave, you or I may as lawfully preach as they that do; and I believe we should perform that office a great deal better, than they that preached us into the rebellion.

A. The Church morals are in many points very different from these, that I have here set down, for the doctrine of virtue and vice; and yet without any conformity with that of Aristotle. For in the Church of Rome, the principal virtues are, to obey their doctrine, though it be treason, and that is to be religious; to be beneficial to the clergy, that is

PART I. their piety and liberality; and to believe upon their word that which a man knows in his conscience to be false, which is the faith they require. I could name a great many more such points of their morals, but that I know you know them already, being so well versed in the cases of conscience written by their schoolmen, who measure the goodness and wickedness of all actions, by their congruity with the doctrine of the Roman clergy.

B. But what is the moral philosophy of the Protestant clergy in England?

A. So much as they show of it in their life and conversation, is for the most part very good, and of very good example; much better than their writings.

B. It happens many times that men live honestly for fear, who, if they had power, would live according to their own opinions; that is, if their opinions be not right, unrighteously.

A. Do the clergy in England pretend, as the Pope does, or as the Presbyterians do, to have a right from God immediately, to govern the King and his subjects in all points of religion and manners? If they do, you cannot doubt but that if they had number and strength, which they are never like to have, they would attempt to obtain that power, as the others have done.

B. I would be glad to see a system of the present morals, written by some divine of good reputation and learning, of the late King's party.

A. I think I can recommend unto you the best that is extant, and such a one as (except a few passages that I mislike) is very well worth your reading. The title of it is, *The whole Duty of Man laid down in a plain and familiar way.* And, yet,

I dare say, that if the Presbyterian ministers, even those of them which were the most diligent preachers of the late sedition, were to be tried by it, they would go near to be found not guilty. He has divided the duty of man into three great branches; which are, his duty to God, to himself, and to his neighbour. In his duty to God, he puts the acknowledgment of him in his essence and his attributes, and in the believing of his word. His attributes are omnipotence, omniscience, infiniteness, justice, truth, mercy, and all the rest that are found in Scripture. Which of these did not those seditious preachers acknowledge equally with the best of Christians? The word of God are the books of Holy Scripture, received for canonical in England.

B. They receive the word of God; but it is according to their own interpretation.

A. According to whose interpretation was it received by the bishops and the rest of the loyal party, but their own? He puts for another duty, obedience and submission to God's will. Did any of them, nay, did any man living, do any thing, at any time, against God's will?

B. By God's will, I suppose, he means there his revealed will, that is to say, his commandments, which I am sure they did most horribly break, both by their preaching and otherwise.

A. As for their own actions, there is no doubt but all men are guilty enough, if God deal severely with them, to be damned. And for their preaching, they will say, they thought it agreeable to God's revealed will in the Scriptures. If they thought it so, it was not disobedience, but error. And how can any man prove they thought otherwise?

PART I.

B. Hypocrisy hath this great prerogative above other sins, that it cannot be accused.

A. Another duty he sets down is, to honour Him in his house (that is, the Church), in his possessions, in his day, in his word and sacraments.

B. They perform this duty as well, I think, as any other ministers, I mean the loyal party; and the Presbyterians have always had an equal care to have God's house free from profanation; to have tithes duly paid, and offerings accepted; to have the sabbath day kept holy, the word preached, and the Lord's supper and baptism duly administered. But is not keeping of the feasts and fasts, one of those duties that belong to the honour of God? If it be, the Presbyterians fail in that.

A. Why so? They kept some holidays, and they had fasts amongst themselves, though not upon the same days that the Church ordains, but when they thought fit; as when it pleased God to give the King any notable victory. And they governed themselves in this point by the Holy Scripture, as they pretend to believe. And who can prove they do not believe so?

B. Let us pass over all other duties, and come to that duty which we owe to the King, and consider whether the doctrine taught by those divines which adhered to the King, be such in that point, as may justify the Presbyterians, that incited the people to rebellion. For that is the thing you call in question.

A. Concerning our duty to our rulers, he hath these words: "An obedience we must pay, either active or passive; the active, in the case of all lawful commands, that is, whenever the magistrate commands something which is not contrary to some

command of God, we are then bound to act according to that command of the magistrate, to do the things he requires; but when he enjoins any thing contrary to what God hath commanded, we are not then to pay him this active obedience; we may, nay we must, refuse thus to act (yet, here we must be very well assured, that the thing is so contrary, and not pretend conscience for a cloak of stubbornness); we are, in that case, to obey God rather than men; but even this is a season for the passive obedience; we must patiently suffer what he inflicts on us for such refusal, and not, to secure ourselves, rise up against him."

B. What is there in this, to give colour to the late rebellion?

A. They will say they did it in obedience to God, inasmuch as they did believe it was according to the Scripture; out of which they will bring examples, perhaps of David and his adherents, that resisted King Saul, and of the prophets afterward, that vehemently from time to time preached against the idolatrous Kings of Israel and Judah. Saul was their lawful King, and yet they paid him neither active nor passive obedience; for they did put themselves into a posture of defence against him, though David himself spared his person. And so did the Presbyterians put into their commissions to their general, that they should spare the King's person. Besides, you cannot doubt but that they, who in the pulpit did animate the people to take arms in the defence of the then Parliament, alleged Scripture, that is, the word of God for it. If it be lawful then for subjects to resist the King, when he commands any thing that is against the Scripture,

PART I. that is, contrary to the command of God, and to be judge of the meaning of the Scripture, it is impossible that the life of any King, or the peace of any Christian kingdom, can be long secure. It is this doctrine that divides a kingdom within itself, whatsoever the men be, loyal or rebels, that write or preach it publicly. And thus you see that if those seditious ministers be tried by this doctrine, they will come off well enough.

B. I see it; and wonder at people that have never spoken with God Almighty, nor knowing one more than another what he hath said, when the laws and the preacher disagree, should so keenly follow the minister, (for the most part an ignorant, though a ready-tongued, scholar), rather than the laws, that were made by the King with the consent of the peers and the commons of the land.

A. Let us examine his words a little nearer. First, concerning passive obedience. When a thief hath broken the laws, and according to the law is therefore executed, can any man understand that this suffering of his is in obedience to the law? Every law is a command to do, or to forbear: neither of these is fulfilled by suffering. If any suffering can be called obedience, it must be such as is voluntary; for no involuntary action can be counted a submission to the law. He that means that his suffering should be taken for obedience, must not only not resist, but also not fly, nor hide himself to avoid his punishment. And who is there amongt them that discourse of passive obedience, when his life is in extreme danger, that will voluntarily present himself to the officers of justice? Do not we see that all men, when they are led to execution, are both bound and guarded, and would break loose if they could, and

get away? Such is their passive obedience. Christ saith (Matth. xxiii, 2, 3): *The Scribes and Pharisees sit in Moses' chair; all therefore, whatsoever they bid you observe, that observe and do:* which is a doing an active obedience. And yet the Scribes and Pharisees appear not by the Scripture to have been such godly men, as never to command any thing against the revealed will of God.

B. Must tyrants also be obeyed in every thing actively? Or is there nothing wherein a lawful King's command may be disobeyed? What if he should command me with my own hands to execute my father, in case he should be condemned to die by the law?

A. This is a case that need not be put. We never have read nor heard of any King or tyrant so inhuman as to command it. If any did, we are to consider whether that command were one of his laws. For by disobeying Kings, we mean the disobeying of his laws, those his laws that were made before they were applied to any particular person; for the King, though as a father of children, and a master of domestic servants, yet he commands the people in general never but by a precedent law, and as a politic, not a natural person. And if such a command as you speak of were contrived into a general law (which never was, nor never will be), you were bound to obey it, unless you depart the kingdom after the publication of the law, and before the condemnation of your father.

B. Your author says further, in refusing active obedience to the King, that commanded anything contrary to God's law, we must be very well assured that the thing is so contrary. I would fain know how it is possible to be assured.

PART I.

A. I think you do not believe that any of those refusers do, immediately from God's own mouth, receive any command contrary to the command of the King, who is God's lieutenant, nor any other way than you and I do, that is to say, than by the Scriptures. And because men do, for the most part, rather draw the Scripture to their own sense, than follow the true sense of the Scripture, there is no other way to know, certainly, and in all cases, what God commands, or forbids us to do, but by the sentence of him or them that are constituted by the King to determine the sense of the Scripture, upon hearing of the particular case of conscience which is in question. And they that are so constituted, are easily known in all Christian commonwealths, whether they be bishops, or ministers, or assemblies, that govern the Church under him or them that have the sovereign power.

B. Some doubts may be raised from this that you now say. For if men be to learn their duty from the sentence which other men shall give concerning the meaning of the Scriptures, and not from their own interpretation, I understand not to what end they were translated into English, and every man not only permitted, but also exhorted, to read them. For what could that produce, but diversity of opinion, and consequently, as man's nature is, disputation, breach of charity, disobedience, and at last rebellion? Again, since the Scripture was allowed to be read in English, why were not the translations such as might make all that is read, understood even by mean capacities? Did not the Jews, such as could read, understand their law in the Jewish language, as well as we do our statute

laws in English? And as for such places of the Scripture, as had nothing of the nature of a law, it was nothing to the duty of the Jews, whether they were understood or not, seeing nothing is punishable but the transgression of some law. The same question I may ask concerning the New Testament. For, I believe, that those men to whom the original language was natural, did understand sufficiently what commands and councils were given them by our Saviour and his apostles, and his immediate disciples. Again, how will you answer that question which was put by St. Peter and St. John (*Acts* iv, 19), when by Annas the high-priest, and others of the Council of Jerusalem, they were forbidden to teach any more in the name of Jesus: *Whether it is right in the sight of God, to hearken unto you more than unto God?*

A. The case is not the same. Peter and John had seen and daily conversed with our Saviour; and by the miracles he wrought, did know he was God, and consequently knew certainly that their disobedience to the high-priest's present command was just. Can any minister now say, that he hath immediately from God's own mouth received a command to disobey the King, or know otherwise than by the Scripture, that any command of the King, that hath the form and nature of a law, is against the law of God, which in divers places, directly and evidently, commandeth to obey him in all things? The text you cite does not tell us, that a minister's authority, rather than a Christian King's, shall decide the questions that arise from the different interpretations of the Scripture. And therefore, where the King is head of the Church, and by con-

PART I. sequence (to omit that the Scripture itself was not received but by the authority of Kings and States) chief judge of the rectitude of all interpretations of the Scripture, to obey the King's laws and public edicts, is not to disobey, but to obey God. A minister ought not to think that his skill in the Latin, Greek, or Hebrew tongues, if he have any, gives him a privilege to impose upon all his fellow subjects his own sense, or what he pretends to be his sense, of every obscure place of Scripture: nor ought he, as oft as he hath found out some fine interpretation, not before thought on by others, to think he had it by inspiration: for he cannot be assured of that; no, nor that his interpretation, as fine as he thinks it, is not false: and then all his stubbornness and contumacy towards the King and his laws, is nothing but pride of heart and ambition, or else imposture. And whereas you think it needless, or perhaps hurtful, to have the Scriptures in English, I am of another mind. There are so many places of Scripture easy to be understood, that teach both true faith and good morality (and that as fully as is necessary to salvation), of which no seducer is able to dispossess the mind of any ordinary reader, that the reading of them is so profitable as not to be forbidden without great damage to them and the commonwealth.

B. All that is required, both in faith and manners, for man's salvation, is, I confess, set down in Scripture as plainly as can be. *Children obey your parents in all things: Servants obey your masters: Let all men be subject to the higher powers, whether it be the King or those that are sent by him: Love God with all your soul, and your neigh-*

bour as yourself: are words of the Scripture, which are well enough understood; but neither children, nor the greatest part of men, do understand why it is their duty to do so. They see not that the safety of the commonwealth, and consequently their own, depends upon their doing it. Every man by nature, without discipline, does in all his actions look upon, as far as he can see, the benefit that shall redound to himself from his obedience. He reads that covetousness is the root of all evil; but he thinks, and sometimes finds, it is the root of his estate. And so in other cases the Scripture says one thing, and they think another, weighing the commodities or incommodities of this present life only, which are in their sight, never putting into the scales the good and evil of the life to come, which they see not.

A. All this is no more than happens where the Scripture is sealed up in Greek and Latin, and the people taught the same things out of them by preachers. But they that are of a condition and age fit to examine the sense of what they read, and that take a delight in searching out the grounds of their duty, certainly cannot choose but by their reading of the Scriptures come to such a sense of their duty, as not only to obey the laws themselves, but also to induce others to do the same. For commonly men of age and quality are followed by their inferior neighbours, that look more upon the example of those men whom they reverence, and whom they are unwilling to displease, than upon precepts and laws.

B. These men, of the condition and age you speak of, are, in my opinion, the unfittest of all

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others to be trusted with the reading of the Scriptures. I know you mean such as have studied the Greek or Latin, or both tongues, and that are withal such as love knowledge, and consequently take delight in finding out the meaning of the most hard texts, or in thinking they have found it, in case it be new and not found out by others. These are therefore they, that prætermitting the easy places which teach them their duty, fall to scanning only of the mysteries of religion. Such as are: *How it may be made out with wit, that there be three that bear rule in heaven, and those three but one? How the Deity could be made flesh? How that flesh could be really present in many places at once? Where is the place, and what the torments, of hell?* And other metaphysical doctrines: *Whether the will of man be free, or governed by the will of God? Whether sanctity comes by inspiration or education? By whom Christ now speaks to us, whether by the King, or by the clergy, or by the Bible, to every man that reads it and interprets it to himself, or by a private spirit to every private man?* These and the like points are the study of the curious, and the cause of all our late mischief, and the cause that makes the plainer sort of men, whom the Scripture had taught belief in Christ, love towards God, obedience to the King, and sobriety of behaviour, forget it all, and place their religion in the disputable doctrines of these your wise men.

A. I do not think these men fit to interpret the Scripture to the rest, nor do I say that the rest ought to take their interpretation for the word of God. Whatsoever is necessary for them to know,

is so easy, as not to need interpretation: whatsoever is more, does them no good. But in case any of those unnecessary doctrines shall be authorized by the laws of the King or other state, I say it is the duty of every subject not to speak against them: in as much as it is every man's duty to obey him or them that have the sovereign power, and the wisdom of all such powers to punish such as shall publish or teach their private interpretations, when they are contrary to the law, and likely to incline men to sedition or disputing against the law.

B. They must punish then the most of those that have had their breeding in the Universities. For such curious questions in divinity are first started in the Universities, and so are all those politic questions concerning the rights of civil and ecclesiastic government; and there they are furnished with arguments for liberty out of the works of Aristotle, Plato, Cicero, Seneca, and out of the histories of Rome and Greece, for their disputation against the necessary power of their sovereigns. Therefore I despair of any lasting peace amongst ourselves, till the Universities here shall bend and direct their studies to the settling of it, that is, to the teaching of absolute obedience to the laws of the King, and to his public edicts under the Great Seal of England. For I make no doubt, but that solid reason, backed with the authority of so many learned men, will more prevail for the keeping of us in peace within ourselves, than any victory can do over the rebels. But I am afraid that it is impossible to bring the Universities to such a compliance with the actions of state, as is necessary for the business.

A. Seeing the Universities have heretofore from

PART I. time to time maintained the authority of the Pope, contrary to all laws divine, civil, and natural, against the right of our Kings, why can they not as well, when they have all manner of laws and equity on their side, maintain the rights of him that is both sovereign of the kingdom, and head of the Church?

B. Why then were they not in all points for the King's power, presently after that King Henry VIII was in Parliament declared head of the Church, as much as they were before for the authority of the Pope?

A. Because the clergy in the Universities, by whom all things there are governed, and the clergy without the Universities, as well bishops as inferior clerks, did think that the pulling down of the Pope was the setting up of them, as to England, in his place, and made no question, the greatest part of them, but that their spiritual power did depend not upon the authority of the King, but of Christ himself, derived to them by a successive imposition of hands from bishop to bishop; notwithstanding they knew that this derivation passed through the hands of popes and bishops whose authority they had cast off. For though they were content that the divine right, which the Pope pretended to in England, should be denied him, yet they thought it not so fit to be taken from the Church of England, whom they now supposed themselves to represent. It seems they did not think it reasonable that a woman, or a child, or a man that could not construe the Hebrew, Greek, or Latin Bible, nor know perhaps the declensions and conjugations of Greek or Latin nouns and verbs, should take upon him to govern so many learned doctors

in matters of religion; meaning matters of divinity: for religion has been for a long time, and is now by most people, taken for the same thing with divinity, to the great advantage of the clergy.

B. And especially now amongst the Presbyterians. For I see few that are by them esteemed very good Christians, besides such as can repeat their sermons, and wrangle for them about the interpretation of the Scripture, and fight for them also with their bodies or purses, when they shall be required. To believe in Christ is nothing with them, unless you believe as they bid you. Charity is nothing with them, unless it be charity and liberality to them, and partaking with them in faction. How we can have peace while this is our religion, I cannot tell. *Hæret lateri lethalis arundo.* The seditious doctrine of the Presbyterians has been stuck so hard in the people's heads and memories, (I cannot say into their hearts; for they understand nothing in it, but that they may lawfully rebel), that I fear the commonwealth will never be cured.

A. The two great virtues, that were severally in Henry VII and Henry VIII, when they shall be jointly in one King, will easily cure it. That of Henry VII was, without much noise of the people to fill his coffers; that of Henry VIII was an early severity; but this without the former cannot be exercised.

B. This that you say looks, methinks, like an advice to the King, to let them alone till he have gotten ready money enough to levy and maintain a sufficient army, and then to fall upon them and destroy them.

A. God forbid that so horrible, unchristian, and

PART I. inhuman a design should ever enter into the King's heart. I would have him have money enough readily to raise an army able to suppress any rebellion, and to take from his enemies all hope of success, that they may not dare to trouble him in the reformation of the Universities; but to put none to death without the actual committing such crimes as are already made capital by the laws. The core of rebellion, as you have seen by this, and read of other rebellions, are the Universities; which nevertheless are not to be cast away, but to be better disciplined: that is to say, that the politics there taught be made to be, as true politics should be, such as are fit to make men know, that it is their duty to obey all laws whatsoever that shall by the authority of the King be enacted, till by the same authority they shall be repealed; such as are fit to make men understand, that the civil laws are God's laws, as they that make them are by God appointed to make them; and to make men know, that the people and the Church are one thing, and have but one head, the King; and that no man has title to govern under him, that has it not from him; that the King owes his crown to God only, and to no man, ecclesiastic or other; and that the religion they teach there, be a quiet waiting for the coming again of our blessed Saviour, and in the mean time a resolution to obey the King's laws, which also are God's laws; to injure no man, to be in charity with all men, to cherish the poor and sick, and to live soberly and free from scandal; without mingling our religion with points of natural philosophy, as freedom of will, incorporeal substance, everlasting nows, ubiquities, hypostases, which the people understand

not, nor will ever care for. When the Universities shall be thus disciplined, there will come out of them, from time to time, well-principled preachers, and they that are now ill-principled, from time to time fall away.

B. I think it a very good course, and perhaps the only one that can make our peace amongst ourselves constant. For if men know not their duty, what is there that can force them to obey the laws? An army, you will say. But what shall force the army? Were not the trained bands an army? Were they not the janissaries, that not very long ago slew Osman in his own palace at Constantinople? I am therefore of your opinion, both that men may be brought to a love of obedience by preachers and gentlemen that imbibe good principles in their youth at the Universities, and also that we never shall have a lasting peace, till the Universities themselves be in such manner, as you have said, reformed; and the ministers know they have no authority but what the supreme civil power gives them; and the nobility and gentry know that the liberty of a state is not an exemption from the laws of their own country, whether made by an assembly or by a monarch, but an exemption from the constraint and insolence of their neighbours.

And now I am satisfied in this point, I will bring you back to the place from whence my curiosity drew you to this long digression. We were upon the point of ship-money; one of those grievances which the Parliament exclaimed against as tyrannical and arbitrary government; thereby to single out, as you called it, the King from his subjects,

PART I. and to make a party against him, when they should need it. And now you may proceed, if it please you, to such other artifices as they used to the same purpose.

A. I think it were better to give over here our discourse of this business, and refer it to some other day that you shall think fit.

B. Content. That day I believe is not far off.

PART II.

A. You are welcome; yet, if you had staid somewhat longer, my memory would have been so much the better provided for you. PART II.

B. Nay, I pray you give me now what you have about you; for the rest I am content you take what time you please.

A. After the Parliament had made the people believe that the exacting of ship-money was unlawful, and the people thereby inclined to think it tyrannical; in the next place, to increase their disaffection to his Majesty, they accused him of a purpose to introduce and authorize the Roman religion in this kingdom: than which nothing was more hateful to the people; not because it was erroneous, which they had neither learning nor judgment enough to examine, but because they had been used to hear it inveighed against in the sermons and discourses of the preachers whom they trusted to. And this was indeed the most effectual calumny, to alienate the people's affections from him, that could possibly be invented. The colour they had for this slander was, first, that there was one Rosetti, Resident, at and a little before that time, from the Pope, with the Queen; and one Mr. George Con, Secretary to the Cardinal Francisco Barberini, nephew to Pope Urban VIII, sent over, under favour and protection of the Queen, as was conceived, to draw as many persons of quality about the court,

PART II. as he should be able, to reconcile themselves to the Church of Rome: with what success I cannot tell; but it is likely he gained some, especially of the weaker sex; if I may say, they were gained by him, when not his arguments, but hope of favour from the Queen, in all probability prevailed upon them.

B. In such a conjuncture as that was, it had perhaps been better they had not been sent.

A. There was exception also taken at a convent of friars-capucins in Somerset-House, though allowed by the articles of marriage: and it was reported, that the Jesuits also were shortly after to be allowed a convent in Clerkenwell. And in the mean time, the principal secretary, Sir Francis Windebank, was accused for having by his warrant set at liberty some English Jesuits, that had been taken and imprisoned for returning into England after banishment, contrary to the statute which had made it capital. Also the resort of English Catholics to the Queen's chapel, gave them colour to blame the Queen herself, not only for that, but also for all the favours that had been shown to the Catholics; in so much that some of them did not stick to say openly, that the King was governed by her.

B. Stange injustice! The Queen was a Catholic by profession, and therefore could not but endeavour to do the Catholics all the good she could: she had not else been truly that which she professed to be. But it seems they meant to force her to hypocrisy, being hypocrites themselves. Can any man think it a crime in a devout lady, of what sect soever, to seek the favour and benediction of that Church whereof she is a member?

A. To give the Parliament another colour for their accusation on foot of the King, as to introducing of Popery, there was a great controversy between the Episcopal and Presbyterian clergy about free-will. The dispute began first in the Low Countries, between Gomar and Arminius, in the time of King James, who foreseeing it might trouble the Church of England, did what he could to compose the difference. And an assembly of divines was thereupon got together at Dort, to which also King James sent a divine or two, but it came to nothing; the question was left undecided, and became a subject to be disputed of in the universities here. All the Presbyterians were of the same mind with Gomar: but a very great many others not; and those were called here Arminians, who, because the doctrine of free-will had been exploded as a Papistical doctrine, and because the Presbyterians were far the greater number, and already in favour with the people, were generally hated. It was easy, therefore, for the Parliament to make that calumny pass currently with the people, when the Archbishop of Canterbury, Dr. Laud, was for Arminius, and had a little before, by his power ecclesiastical, forbidden all ministers to preach to the people of predestination; and when all ministers that were gracious with him, and hoped for any Church preferment, fell to preaching and writing for free-will, to the uttermost of their power, as a proof of their ability and merit. Besides, they gave out, some of them, that the Archbishop was in heart a Papist; and in case he could effect a toleration here of the Roman religion, was to have a cardinal's hat: which was not only false, but also without any ground at all for a suspicion.

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B. It is a strange thing, that scholars, obscure men that could receive no clarity but from the flame of the state, should be suffered to bring their unnecessary disputes, and together with them their quarrels, out of the universities into the commonwealth; and more strange, that the state should engage in their parties, and not rather put them both to silence.

A. A state can constrain obedience, but convince no error, nor alter the mind of them that believe they have the better reason. Suppression of doctrines does but unite and exasperate, that is, increase both the malice and power of them that have already believed them.

B. But what are the points they disagree in? Is there any controversy between Bishop and Presbyterian concerning the divinity or humanity of Christ? Do either of them deny the Trinity, or any article of the creed? Does either party preach openly, or write directly, against justice, charity, sobriety, or any other duty necessary to salvation, except only the duty to the King; and not that neither, but when they have a mind either to rule or destroy the King? Lord have mercy upon us! Can nobody be saved that understands not their disputations? Or is there more requisite, either of faith or honesty, for the salvation of one man than another? What needs so much preaching of faith to us that are no heathens, and that believe already all that Christ and his apostles have told us is necessary to salvation, and more too? Why is there so little preaching of justice? I have indeed heard righteousness often recommended to the people, but I have seldom heard the word justice in their sermons; nay, though in the Latin

and Greek Bible the word justice occur exceeding often, yet in the English, though it be a word that every man understands, the word righteousness (which few understand to signify the same, but take it rather for rightness of opinion, than of action or intention), is put in the place of it.

A. I confess I know very few controversies amongst Christians, of points necessary to salvation. They are the questions of authority and power over the Church, or of profit, or of honour to Churchmen, that for the most part raise all the controversies. For what man is he, that will trouble himself and fall out with his neighbours for the saving of my soul, or the soul of any other than himself? When the Presbyterian ministers and others did so seriously preach sedition, and animate men to rebellion in these late wars; who was there that had not a benefice, or having one feared not to lose it, or some other part of his maintainance, by the alteration of the Government, that did voluntary, without any eye to reward, preach so earnestly against sedition, as the other party preached for it? I confess, that for aught I have observed in history, and other writings of the heathens, Greek and Latin, that those heathens were not at all behind us in point of virtue and moral duties, notwithstanding that we have had much preaching, and they none at all. I confess also, that considering what harm may proceed from a liberty that men have, upon every Sunday and oftener, to harangue all the people of a nation at one time, whilst the state is ignorant of what they will say; and that there is no such thing permitted in all the world out of Christendom, nor therefore any civil

PART II. wars about religion; I have thought much preaching an inconvenience. Nevertheless, I cannot think that preaching to the people the points of their duty, both to God and man, can be too frequent; so it be done by grave, discreet, and ancient men, that are reverenced by the people; and not by light quibbling young men, whom no congregation is so simple as to look to be taught by (as being a thing contrary to nature), or to pay them any reverence, or to care what they say, except some few that may be delighted with their jingling. I wish with all my heart, there were enough of such discreet and ancient men, as might suffice for all the parishes of England, and that they would undertake it. But this is but a wish; I leave it to the wisdom of the State to do what it pleaseth.

B. What did they next?

A. Whereas the King had sent prisoners into places remote from London, three persons that had been condemned for publishing seditious doctrine, some in writing, some in public sermons; the Parliament (whether with his Majesty's consent or no, I have forgotten), caused them to be released and to return to London; meaning, I think, to try how the people would be pleased therewith, and, by consequence, how their endeavours to draw the people's affections from the King had already prospered. When these three came through London, it was a kind of triumph, the people flocking together to behold them, and receiving them with such acclamations, and almost adoration, as if they had been let down from heaven; insomuch as the Parliament was now sufficiently assured of a great and tumultuous party, whensoever they should have

occasion to use it. On confidence whereof they proceeded to their next plot, which was to deprive the King of such ministers as by their wisdom, courage, and authority, they thought most able to prevent, or oppose their further designs against the King. And first, the House of Commons resolved to impeach the Earl of Strafford, Lord Lieutenant of Ireland, of high-treason.

B. What was that Earl of Strafford before he had that place? And how had he offended the Parliament or given them cause to think he would be their enemy? For I have heard that in former Parliaments he had been as parliamentary as any other.

A. His name was Sir Thomas Wentworth, a gentleman both by birth and estate very considerable in his own county, which was Yorkshire; but more considerable for his judgment in the public affairs, not only of that county, but generally of the kingdom; and was therefore often chosen for the Parliament, either as burgess for some borough, or knight of the shire. For his principles of politics, they were the same that were generally proceeded upon by all men else that were thought fit to be chosen for the Parliament; which are commonly these: to take for the rule of justice and government the judgments and acts of former Parliaments, which are commonly called precedents; to endeavour to keep the people from being subject to extra-parliamentary taxes of money, and from being with parliamentary taxes too much oppressed; to preserve to the people their liberty of body from the arbitrary power of the King out of Parliament; to seek redress of grievances.

B. What grievances?

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A. The grievances were commonly such as these; the King's too much liberality to some favourite; the too much power of some minister or officer of the commonwealth; the misdemeanour of judges, civil or spiritual; but especially all unparliamentary raising of money upon the subjects. And commonly of late, till such grievances be redressed, they refuse, or at least make great difficulty, to furnish the King with money necessary for the most urgent occasions of the commonwealth.

B. How then can a King discharge his duty as he ought to do, or the subject know which of his masters he is to obey? For here are manifestly two powers, which, when they chance to differ, cannot both be obeyed.

A. It is true; but they have not often differed so much to the danger of the commonwealth, as they have done in this Parliament, 1640. In all the Parliaments of the late King Charles before the year 1640, my Lord of Strafford did appear in opposition to the King's demands as much as any man, and was for that cause very much esteemed and cried up by the people as a good patriot, and one that courageously stood up in defence of their liberties; and for the same cause was so much the more hated, when afterwards he endeavoured to maintain the royal and just authority of his Majesty.

B. How came he to change his mind so much as it seems he did?

A. After the dissolution of the Parliament holden in the years 1627 and 1628, the King, finding no money to be gotten from Parliaments which he was not to buy with the blood of such servants and ministers as he loved best, abstained a long time

from calling any more, and had abstained longer if the rebellion of the Scotch had not forced him to it. During that Parliament the King made Sir Thomas Wentworth a baron, recommended to him for his great ability, which was generally taken notice of by the disservice he had done the King in former Parliaments, but which might be useful for him in the times that came on: and not long after he made him of the Council, and after that again Lieutenant of Ireland, which place he discharged with great satisfaction and benefit to his Majesty, and continued in that office, till, by the envy and violence of the Lords and Commons of that unlucky Parliament of 1640, he died. In which year he was made general of the King's forces against the Scots that then entered into England, and the year before, Earl of Strafford. The pacification being made, and the forces on both sides disbanded, and the Parliament at Westminster now sitting, it was not long before the House of Commons accused him to the House of Lords for high-treason.

B. There was no great probability of his being a traitor to the King, from whose favour he had received his greatness, and from whose protection he was to expect his safety. What was the treason they laid to his charge?

A. Many articles were drawn up against him, but the sum of them was contained in these two: first, that he had traitorously endeavoured to subvert the fundamental laws and government of the realm; and in stead thereof to introduce an arbitrary and tyrannical government against law: secondly, that he had laboured to subvert the rights of Parliaments, and the ancient course of Parliamentary proceedings.

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B. Was this done by him without the knowledge of the King?

A. No.

B. Why then, if it were treason, did not the King himself call him in question by his attorney? What had the House of Commons to do, without his command, to accuse him in the House of Lords? They might have complained to the King, if he had not known it before. I understand not this law.

A. Nor I.

B. Had this been by any former statutes made treason?

A. Not that I ever heard of; nor do I understand how anything can be treason against the King, that the King, hearing and knowing, does not think treason. But it was a piece of that Parliament's artifice, to put the word *traiterously* to any article exhibited against any man whose life they meant to take away.

B. Was there no particular instance of action or words, out of which they argued that endeavour of his to subvert the fundamental laws of Parliament, whereof they accused him?

A. Yes; they said he gave the King counsel to reduce the Parliament to their duty by the Irish army, which not long before my Lord of Strafford himself had caused to be levied there for the King's service. But it was never proved against him, that he advised the King to use it against the Parliament.

B. What are those laws that are called fundamental? For I understand not how one law can be more fundamental than another, except only that law of nature that binds us all to obey him, whosoever he be, whom lawfully and for our own

safety, we have promised to obey; nor any other fundamental law to a King, but *salus populi*, the safety and well-being of his people.

A. This Parliament, in the use of their words, when they accused any man, never regarded the signification of them, but the weight they had to aggravate their accusation to the ignorant multitude, which think all faults heinous that are expressed in heinous terms, if they hate the person accused, as they did this man not only for being of the King's party, but also for deserting the Parliament's party as an apostate.

B. I pray you tell me also what they meant by arbitrary government, which they seemed so much to hate? Is there any governor of a people in the world that is forced to govern them, or forced to make this and that law, whether he will or no? I think not: or if any be, he that forces him does certainly make laws, and govern arbitrarily.

A. That is true; and the true meaning of the Parliament was, that not the King, but they themselves, should have the arbitrary government, not only of England, but of Ireland, and, as it appeared by the event, of Scotland also.

B. How the King came by the government of Scotland and Ireland by descent from his ancestors, everybody can tell; but if the King of England and his heirs should chance (which God forbid) to fail, I cannot imagine what title the Parliament of England can acquire thereby to either of those nations.

A. Yes; they will say they had been conquered anciently by the English subjects' money.

B. Like enough, and suitable to the rest of their impudence.

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A. Impudence in democratical assemblies does almost all that is done; it is the goddess of rhetoric, and carries proof with it. For what ordinary man will not, from so great boldness of affirmation, conclude there is great probability in the thing affirmed? Upon this accusation he was brought to his trial in Westminster Hall before the House of Lords, and found guilty, and presently after declared traitor by a bill of attainder, that is, by Act of Parliament.

B. It is a strange thing that the Lords should be induced, upon so light grounds, to give a sentence, or give their assent to a bill, so prejudicial to themselves and their posterity.

A. It was not well done, and yet, as it seems, not ignorantly; for there is a clause in the bill, that it should not be taken hereafter for an example, that is for a prejudice, in the like case hereafter.

B. That is worse than the bill itself, and is a plain confession that their sentence was unjust. For what harm is there in the examples of just sentences? Besides, if hereafter the like case should happen, the sentence is not at all made weaker by such a provision.

A. Indeed I believe that the Lords, most of them, were not of themselves willing to condemn him of treason; they were awed to it by the clamour of common people that came to Westminster, crying out, *Justice, Justice against the Earl of Strafford!* The which were caused to flock thither by some of the House of Commons, that were well assured, after the triumphant welcome of Prynne, Burton, and Bastwick, to put the people into tu-

mult upon any occasion they desired. They were awed unto it partly also by the House of Commons itself, which if it desired to undo a Lord, had no more to do but to vote him a delinquent.

B. A delinquent; what is that? A sinner is it not? Did they mean to undo all sinners?

A. By delinquent they meant only a man to whom they would do all the hurt they could. But the Lords did not yet, I think, suspect they meant to cashier their whole House.

B. It is a strange thing the whole House of Lords should not perceive that the ruin of the King's power, and the weakening of it, was the ruin, or weakening of themselves. For they could not think it likely that the people ever meant to take the sovereignty from the King to give it to them, who were few in number, and less in power than so many Commoners, because less beloved by the people.

A. But it seems not so strange to me. For the Lords, for their personal abilities, as they were no less, so also they were no more skilful in the public affairs, than the knights and burgesses. For there is no reason to think, that if one that is to-day a knight of the shire in the lower House, be to-morrow made a Lord and a member of the higher House, he is therefore wiser than he was before. They are all, of both Houses, prudent and able men as any in the land, in the business of their private estates, which require nothing but diligence and natural wit to govern them. But for the government of a commonwealth, neither wit, nor prudence, nor diligence, is enough, without infallible rules and the true science of equity and justice.

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B. If this be true, it is impossible any commonwealth in the world, whether monarchy, aristocracy, or democracy, should continue long without change, or sedition tending to change, either of the government or of the governors.

A. It is true; nor have any the greatest commonwealths in the world been long free from sedition. The Greeks had for awhile their petty kings, and then by sedition came to be petty commonwealths; and then growing to be greater commonwealths, by sedition again became monarchies; and all for want of rules of justice for the common people to take notice of; which if the people had known in the beginning of every of these seditions, the ambitious persons could never have had the hope to disturb their government after it had been once settled. For ambition can do little without hands, and few hands it would have, if the common people were as diligently instructed in the true principles of their duty, as they are terrified and amazed by preachers, with fruitless and dangerous doctrines concerning the nature of man's will, and many other philosophical points that tend not at all to the salvation of the soul in the world to come, nor to their ease in this life, but only to the direction towards the clergy of that duty which they ought to perform to the King.

B. For aught I see, all the states of Christendom will be subject to these fits of rebellion, as long as the world lasteth.

A. Like enough; and yet the fault, as I have said, may be easily mended, by mending the Universities.

B. How long had the Parliament now sitten?

A. It began November the 3d, 1640. My Lord of Strafford was impeached of treason before the Lords, November the 12th, sent to the Tower November the 22d, his trial began March the 22d, and ended April the 13th. After his trial he was voted guilty of high-treason in the House of Commons, and after that in the House of Lords, May the 6th, and on the 12th of May beheaded.

B. Great expedition; but could not the King, for all that, have saved him by a pardon?

A. The King had heard all that passed at his trial, and had declared he was unsatisfied concerning the justice of their sentence. And, I think, notwithstanding the danger of his own person from the fury of the people, and that he was counselled to give way to his execution, not only by such as he most relied on, but also by the Earl of Strafford himself, he would have pardoned him, if that could have preserved him against the tumult raised and countenanced by the Parliament itself, for the terrifying of those they thought might favour him. And yet the King himself did not stick to confess afterwards, that he had done amiss, in that he did not rescue him.

B. It was an argument of good disposition in the King. But I never read that Augustus Cæsar acknowledged that he had done a fault, in abandoning Cicero to the fury of his enemy Antonius: perhaps because Cicero, having been of the contrary faction to his father, had done Augustus no service at all out of favour to him, but only out of enmity to Antonius, and out of love to the senate, that is indeed out of love to himself that swayed the senate; as it is very likely the Earl of Strafford came over to

PART II. the King's party for his own ends, having been so much against the King in former Parliaments.

A. We cannot safely judge of men's intentions. But, I have observed often, that such as seek preferment, by their stubbornness have missed of their aim; and on the other side, that those princes that with preferment are forced to buy the obedience of their subjects, are already, or must be soon after, in a very weak condition. For in a market where honour and power is to be bought with stubbornness, there will be a great many as able to buy as my Lord Strafford was.

B. You have read, that when Hercules fighting with the Hydra, had cut off any one of his many heads, there still arose two other heads in its place; and yet at last he cut them off all.

A. The story is told false. For Hercules at first did not cut off those heads, but bought them off; and afterwards, when he saw it did him no good, then he cut them off, and got the victory.

B. What did they next?

A. After the first impeachment of the Earl of Strafford, the House of Commons, upon December the 18th, accused the Archbishop of Canterbury also of high-treason, that is, of design to introduce arbitrary government, &c.; for which he was, February the 18th, sent to the Tower; but his trial and execution were deferred a long time, till January the 10th, 1643, for the entertainment of the Scots, that were come into England to aid the Parliament.

B. Why did the Scots think there was so much danger in the Archbishop of Canterbury? He was not a man of war, nor a man able to bring an army

into the field; but he was perhaps a very great politician. PART II.

A. That did not appear by any remarkable event of his counsels. I never heard but he was a very honest man for his morals, and a very zealous promoter of the Church-government by bishops, and that desired to have the service of God performed, and the house of God adorned, as suitably as was possible to the honour we ought to do to the Divine Majesty. But to bring, as he did, into the State his former controversies, I mean his squabblings in the University about free-will, and his standing upon punctilios concerning the service-book and its rubrics, was not, in my opinion, an argument of his sufficiency in affairs of state. About the same time they passed an act, which the King consented to, for a triennial Parliament, wherein was enacted, that after the present Parliament there should be a Parliament called by the King within the space of three years, and so from three years to three years, to meet at Westminster upon a certain day named in the act.

B. But what if the King did not call it, finding it perhaps inconvenient, or hurtful to the safety or peace of his people, which God hath put into his charge? For I do not well comprehend how any sovereign can well keep a people in order when his hands are tied, or when he hath any other obligation upon him than the benefit of those he governs; and at this time, for any thing you have told me, they acknowledged the King for their sovereign.

A. I know not; but such was the act. And it was further enacted, that if the King did it not by his own command, then the Lord Chancellor or

PART II. the Lord Keeper for the time being, should send out the writs of summons; and if the Chancellor refused, then the Sheriffs of the several counties should of themselves, in their next county-courts before the day set down for the Parliament's meeting, proceed to the election of the members for the said Parliament.

B. But what if the sheriffs refused?

A. I think they were to be sworn to it: but for that, and other particulars, I refer you to the act.

B. To whom should they be sworn, when there is no Parliament?

A. No doubt but to the King, whether there be a Parliament sitting or no.

B. Then the King may release them of their oath.

A. Besides, they obtained of the King the putting down the Star-chamber, and the High-Commission Courts.

B. Besides, if the King, upon the refusal, should fall upon them in anger; who shall (the Parliament not sitting) protect either the Chancellor or the sheriffs in their disobedience?

A. I pray you do not ask me any reason of such things I understand no better than you. I tell you only an act passed to that purpose, and was signed by the King in the middle of February, a little before the Archbishop was sent to the Tower. Besides this bill, the two Houses of Parliament agreed upon another, wherein it was enacted, that the present Parliament should continue till both the Houses did consent to the dissolution of it; which bill also the King signed the same day he signed the warrant for the execution of the Earl of Strafford.

B. What a great progress made the Parliament towards the ends of the most seditious Members of both Houses in so little time! They sat down in November, and now it was May; in this space of time, which is but half a year, they won from the King the adherence which was due to him from his people; they drove his faithfullest servants from him; beheaded the Earl of Strafford; imprisoned the Archbishop of Canterbury; obtained a triennial Parliament after their own dissolution, and a continuance of their own sitting as long as they listed: which last amounted to a total extinction of the King's right, in case that such a grant were valid; which I think it is not, unless the Sovereignty itself be in plain terms renounced, which it was not. But what money, by way of subsidy or otherwise, did they grant the King, in recompense of all these his large concessions?

A. None at all; but often promised they would make him the most glorious King that ever was in England; which were words that passed well enough for well meaning with the common people.

B. But the Parliament was contented now? For I cannot imagine what they should desire more from the King, than he had now granted them.

A. Yes; they desired the whole and absolute sovereignty, and to change the monarchical government into an oligarchy; that is to say, to make the Parliament, consisting of a few Lords and about four hundred Commoners, absolute in the sovereignty, for the present, and shortly after to lay the House of Lords aside. For this was the design of the Presbyterian ministers, who taking themselves to be, by divine right, the only lawful gover-

PART II. nors of the Church, endeavoured to bring the same form of Government into the civil state. And as the spiritual laws were to be made by their synods, so the civil laws should be made by the House of Commons; who, as they thought, would no less be ruled by them afterwards, than they formerly had been: wherein they were deceived, and found themselves outgone by their own disciples, though not in malice, yet in wit.

B. What followed after this?

A. In August following, the King supposing he had now sufficiently obliged the Parliament to proceed no further against him, took a journey into Scotland, to satisfy his subjects there, as he had done here; intending, perhaps, so to gain their good wills, that in case the Parliament here should levy arms against him, they should not be aided by the Scots: wherein he also was deceived. For though they seemed satisfied with what he did, whereof one thing was his giving way to the abolition of episcopacy; yet afterwards they made a league with the Parliament, and for money, when the King began to have the better of the Parliament, invaded England in the Parliament's quarrel. But this was a year or two after.

B. Before you go any further, I desire to know the ground and original of that right, which either the House of Lords, or House of Commons, or both together, now pretend to.

A. It is a question of things so long past, that they are now forgotten. Nor have we any thing to conjecture by, but the records of our own nation, and some small and obscure fragments of Roman histories: and for the records, seeing they are of

things done only, sometimes justly, sometimes unjustly, you can never by them know what right they had, but only what right they pretended.

B. Howsoever, let me know what light we have in this matter from the Roman histories.

A. It would be too long, and an useless digression, to cite all the ancient authors that speak of the forms of those commonwealths, which were amongst our first ancestors the Saxons and other Germans, and of other nations, from whom we derive the titles of honour now in use in England; nor will it be possible to derive from them any argument of right, but only examples of fact, which, by the ambition of potent subjects, have been oftener unjust than otherwise. And for those Saxons or Angles, that in ancient times by several invasions made themselves masters of this nation, they were not in themselves one body of a commonwealth, but only a league of divers petty German lords and states, such as was the Grecian army in the Trojan war, without other obligation than that which proceeded from their own fear and weakness. Nor were those lords, for the most part, the sovereigns at home in their own country, but chosen by the people for the captains of the forces they brought with them. And therefore it was not without equity, when they had conquered any part of the land, and made some one of them king thereof, that the rest should have greater privileges than the common people and soldiers: amongst which privileges, a man may easily conjecture this to be one; that they should be made acquainted, and be of council, with him that hath the sovereignty in matter of government, and have the greatest and

PART II. most honourable offices both in peace and war. But because there can be no government where there is more than one sovereign, it cannot be inferred that they had a right to oppose the King's resolutions by force, nor to enjoy those honours and places longer than they should continue good subjects. And we find that the Kings of England did, upon every great occasion, call them together by the name of discreet and wise men of the kingdom, and hear their counsel, and make them judges of all causes, that during their sitting were brought before them. But as he summoned them at his own pleasure, so had he also ever the power at his pleasure to dissolve them. The Normans also, that descended from the Germans, as we did, had the same customs in this particular; and by this means, this privilege of the lords to be of the King's great council, and when they were assembled, to be the highest of the King's courts of justice, continued still after the Conquest to this day. But though there be amongst the lords divers names or titles of honour, yet they have their privilege only by the name of baron, a name received from the ancient Gauls; amongst whom, that name signified the King's man, or rather one of his great men: by which it seems to me, that though they gave him counsel when he required it, yet they had no right to make war upon him if he did not follow it.

B. When began first the House of Commons to be part of the King's great council?

A. I do not doubt but that before the Conquest some discreet men, and known to be so by the King, were called by special writ to be of the same council, though they were not lords; but that is nothing

to the House of Commons. The knights of shires and burgesses were never called to Parliament, for aught that I know, till the beginning of the reign of Edward I, or the latter end of the reign of Henry III, immediately after the misbehaviour of the barons; and, for aught any man knows, were called on purpose to weaken that power of the lords, which they had so freshly abused. Before the time of Henry III, the lords were descended, most of them, from such as in the invasions and conquests of the Germans were peers and fellow-kings, till one was made king of them all; and their tenants were their subjects, as it is at this day with the lords of France. But after the time of Henry III, the kings began to make lords in the place of them whose issue failed, titulary only, without the lands belonging to their title; and by that means, their tenants being no longer bound to serve them in the wars, they grew every day less and less able to make a party against the King, though they continued still to be his great council. And as their power decreased, so the power of the House of Commons increased; but I do not find they were part of the King's council at all, nor judges over other men; though it cannot be denied, but a King may ask their advice, as well as the advice of any other. But I do not find that the end of their summoning was to give advice, but only, in case they had any petitions for redress of grievances, to be ready there with them whilst the King had his great council about him. But neither they nor the lords could present to the King, as a grievance, that the King took upon him to make the laws; to choose his own privy-counsellors; to raise money

PART II. and soldiers; to defend the peace and honour of the kingdom; to make captains in his army; to make governors of his castles, whom he pleased. For this had been to tell the King, that it was one of their grievances that he was King.

B. What did the Parliament do, whilst the King was in Scotland?

A. The King went in August; after which, the Parliament, September the 8th, adjourned till the 20th of October; and the King returned about the end of November following. In which time the most seditious of both Houses, and which had designed the change of government and to cast off monarchy, but yet had not wit enough to set up any other government in its place, and consequently left it to the chance of war, made a cabal amongst themselves; in which they projected how, by seconding one another, to govern the House of Commons, and invented how to put the kingdom, by the power of that House, into a rebellion, which they then called a posture of defence against such dangers from abroad, as they themselves should feign and publish. Besides, whilst the King was in Scotland, the Irish Papists got together a great party, with an intention to massacre the Protestants there, and had laid a design for the seizing, on October the 23rd, of Dublin Castle, where the King's officers of the government of that country made their residence; and had effected it, had it not been discovered the night before. The manner of the discovery, and the murders they committed in the country afterwards, I need not tell you, since the whole story of it is extant.

B. I wonder they did not expect and provide

for a rebellion in Ireland, as soon as they began to quarrel with the King in England. For was there any body so ignorant, as not to know that the Irish Papists did long for a change of religion there, as well as the Presbyterians in England? Or, that in general, the Irish nation did hate the name of subjection to England, nor would longer be quiet, than they feared an army out of England to chastise them? What better time then could they take for their rebellion than this, wherein they were encouraged, not only by our weakness caused by this division between the King and his Parliament, but also by the example of the Presbyterians, both of the Scotch and English nation? But what did the Parliament do upon this occasion, in the King's absence?

A. Nothing; but consider what use they might make of it to their own ends; partly, by imputing it to the King's evil counsellors, and partly, by occasion thereof to demand of the King the power of pressing and ordering soldiers; which power whosoever has, has also, without doubt, the whole sovereignty.

B. When came the King back?

A. He came back the 25th of November; and was welcomed with the acclamations of the common people, as much as if he had been the most beloved of all the Kings that were before him; but found not a reception by the Parliament, answerable to it. They presently began to pick new quarrels against him, out of every thing he said to them. December the 2nd, the King called together both Houses of Parliament, and then did only recommend unto them the raising of succours for Ireland.

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B. What quarrel could they pick out of that?

A. None: but in order thereto, as they may pretend, they had a bill in agitation to assert the power of levying and pressing soldiers to the two Houses of the Lords and Commons; which was as much as to take from the King the power of the militia, which is in effect the whole sovereign power. For he that hath the power of levying and commanding the soldiers, has all other rights of sovereignty which he shall please to claim. The King, hearing of it, called the Houses of Parliament together again, on December the 14th, and then pressed again the business of Ireland: (as there was need; for all this while the Irish were murdering the English in Ireland, and strengthening themselves against the forces they expected to come out of England): and withal, told them he took notice of the bill in agitation for pressing of soldiers, and that he was contented it should pass with a *salvo jure* both for him and them, because the present time was unseasonable to dispute it in.

B. What was there unreasonable in this?

A. Nothing: what is unreasonable is one question, what they quarrelled at is another. They quarrelled at this: that his Majesty took notice of the bill, while it was in debate in the House of Lords, before it was presented to him in the course of Parliament; and also that he showed himself displeased with those that propounded the said bill; both which they declared to be against the privileges of Parliament, and petitioned the King to give them reparation against those by whose evil counsel he was induced to it, that they might receive condign punishment.

B. This was cruel proceeding. Do not the Kings of England use to sit in the Lords' House when they please? And was not this bill in debate then in the House of Lords? It is a strange thing that a man should be lawfully in the company of men, where he must needs hear and see what they say and do, and yet must not take notice of it so much as to the same company; for though the King was not present at the debate itself, yet it was lawful for any of the Lords to make him acquainted with it. Any one of the House of Commons, though not present at a proposition or debate in the House, nevertheless hearing of it from some of his fellow-members, may certainly not only take notice of it, but also speak to it in the House of Commons: but to make the King give up his friends and counsellors to them, to be put to death, banishment, or imprisonment, for their good-will to him, was such a tyranny over a king, no king ever exercised over any subject but in cases of treason or murder, and seldom then.

A. Presently hereupon began a kind of war between the pens of the Parliament and those of the secretaries, and other able men that were with the King. For upon the 15th of December they sent to the King a paper called *A Remonstrance of the State of the Kingdom*, and with it a petition; both which they caused to be published. In the remonstrance they complained of certain mischievous designs of a malignant party, then, before the beginning of the Parliament, grown ripe; and did set forth what means had been used for the preventing of it by the wisdom of the Parliament; what rubs they had found therein; what course was

PART II. fit to be taken for restoring and establishing the ancient honour, greatness, and safety, of the Crown and nation.

And first, of these designs the promoters and actors were, they said, Jesuited Papists:

Secondly, the bishops, and that part of the clergy that cherish formality as a support of their own ecclesiastical tyranny and usurpation:

Thirdly, counsellors and courtiers, that for private ends, they said, had engaged themselves to further the interests of some foreign princes.

B. It may very well be, that some of the bishops, and also some of the court, may have, in pursuit of their private interest, done something indiscreetly, and perhaps wickedly. Therefore I pray you tell me in particular what their crimes were: for methinks the King should not have connived at anything against his own supreme authority.

A. The Parliament were not very keen against them that were against the King; they made no doubt but all they did was by the King's command; but accused thereof the bishops, counsellors, and courtiers, as being a more mannerly way of accusing the King himself, and defaming him to his subjects. For the truth is, the charge they brought against them was so general as not to be called an accusation, but railing. As first, they said they nourished questions of prerogative and liberty between the King and his people, to the end that seeming much addicted to his Majesty's service, they might get themselves into places of greatest trust and power in the kingdom.

B. How could this be called an accusation, in which there is no fact for any accusers to apply

their proofs to, or their witnesses. For granting that these questions of prerogative had been moved by them, who can prove that their end was to gain to themselves and friends the places of trust and power in the kingdom?

A. A second accusation was, that they endeavoured to suppress the purity and power of religion.

B. That is canting; it is not in man's power to suppress the power of religion.

A. They meant that they suppressed the doctrine of the Presbyterians; that is to say, the very foundation of the then Parliament's treacherous pretensions.

A third, that they cherished Arminians, Papists, and libertines (by which they meant the common Protestants, which meddle not with disputes), to the end they might compose a body fit to act according to their counsels and resolutions.

A fourth, that they endeavoured to put the King upon other courses of raising money, than by the ordinary way of Parliaments.

Judge whether these may be properly called accusations, or not rather spiteful reproaches of the King's government.

B. Methinks this last was a very great fault. For what good could there be in putting the King upon an odd course of getting money, when the Parliament was willing to supply him, as far as to the security of the kingdom, or to the honour of the King, should be necessary?

A. But I told you before, they would give him none, but with a condition he should cut off the heads of whom they pleased, how faithfully soever they had served him. And if he would have sacri-

PART II. ficed all his friends to their ambition, yet they would have found other excuses for denying him subsidies; for they were resolved to take from him the sovereign power to themselves; which they could never do without taking great care that he should have no money at all. In the next place, they put into the remonstrance, as faults of them whose counsel the King followed, all those things which since the beginning of the King's reign were by them misliked, whether faults or not, and whereof they were not able to judge for want of knowledge of the causes and motives that induced the King to do them, and were known only to the King himself and such of his privy-council as he revealed them to.

B. But what were those particular pretended faults?

A. 1. The dissolution of his first Parliament at Oxford. 2. The dissolution of his second Parliament, being in the second year of his reign. 3. The dissolution of his Parliament in the fourth year of his reign. 4. The fruitless expedition against Calais. 5. The peace made with Spain, whereby the Palatine's cause was deserted, and left to chargeable and hopeless treaties. 6. The sending of commissions to raise money by way of loan. 7. Raising of ship-money. 8. Enlargement of forests, contrary to Magna Charta. 9. The design of engrossing all the gunpowder into one hand, and keeping it in the Tower of London. 10. A design to bring in the use of brass money. 11. The fines, imprisonments, stigmatizings, mutilations, whippings, pillories, gags, confinements, and banishments, by sentence in the Court of Star-chamber. 12. The displacing of judges. 13. Illegal acts of the Coun-

cil-table. 14. The arbitrary and illegal power of the Earl Marshal's Court. 15. The abuses in Chancery, Exchequer-chamber, and Court of Wards. 16. The selling of titles of honour, of judges, and serjeants' places, and other offices. 17. The insolence of bishops and other clerks, in suspensions, excommunications, deprivations, and degradations, of divers painful, and learned, and pious ministers.

B. Were there any such ministers degraded, deprived, or excommunicated?

A. I cannot tell. But I remember I have heard threatened divers painful, unlearned, and seditious ministers.

18. The excess of severity of the High Commission-Court. 19. The preaching before the King against the property of the subject, and for the prerogative of the King above the law. And divers other petty quarrels they had to the government, which though they were laid upon this faction, yet they knew they would fall upon the King himself in the judgment of the people, to whom, by printing, it was communicated.

Again, after the dissolution of the Parliament May the 5th, 1640, they find other faults; as the dissolution itself; the imprisoning some members of both Houses; a forced loan of money attempted in London; the continuance of the Convocation, when the Parliament was ended; and the favour shewed to Papists by Secretary Windebank and others.

B. All this will go current with common people for misgovernment, and for faults of the King, though some of them were misfortunes; and both the misfortunes and the misgovernment, if any were, were the faults of the Parliament; who, by deny-

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ing to give him money, did both frustr ate hsattempts abroad, and put him upon those extraordinary ways, which they call illegal, of raising money at home.

A. You see what a heap of evils they have raised to make a show of ill-government to the people, which they second with an enumeration of the many services they have done the King in overcoming a great many of them, though not all, and in divers other things; and say, that though they had contracted a debt to the Scots of 220,000*l.* and granted six subsidies, and a bill of poll-money worth six subsidies more, yet that God had so blessed the endeavours of this Parliament, that the kingdom was a gainer by it: and then follows the catalogue of those good things they had done for the King and kingdom. For the kingdom they had done, they said, these things: they had abolished ship-money; they had taken away coat and conduct money, and other military charges, which, they said, amounted to little less than the ship-money; that they suppressed all monopolies, which they reckoned above a million yearly saved by the subject; that they had quelled living grievances, meaning evil counsellors and actors, by the death of my Lord of Strafford, by the flight of the Chancellor Finch, and of Secretary Windebank, by the imprisonment of the Archbishop of Canterbury, and of Judge Bartlet, and the impeachment of other bishops and judges; that they had passed a bill for a triennial Parliament, and another for the continuance of the present Parliament, till they should think fit to dissolve themselves.

B. That is to say, for ever, if they be suffered.

But the sum of all these things, which they had done for the kingdom, is, that they had left it without government, without strength, without money, without law, and without good counsel.

A. They reckoned, also, putting down of the High-Commission, and the abating of the power of the Council-table, and of the bishops and their courts; the taking away of unnecessary ceremonies in religion; removing of ministers from their livings, that were not of their faction, and putting in such as were.

B. All this was but their own, and not the kingdom's business.

A. The good they had done the King, was first, they said, the giving of 25,000*l.* a month for the relief of the northern counties.

B. What need of relief had the northern counties, more than the rest of the counties of England?

A. Yes; in the northern counties were quartered the Scotch army, which the Parliament called in to oppose the King, and consequently their quarter was to be discharged.

B. True; but by the Parliament that called them in.

A. But they say no; and that this money was given to the King, because he is bound to protect his subjects.

B. He is no further bound to that, than they to give him money wherewithal to do it. This is very great impudence; to raise an army against the King, and with that army to oppress their fellow-subjects; and then require that the King should relieve them, that is to say, be at the charge of paying the army that was raised to fight against him.

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A. Nay, further; they put to the King's account the 300,000*l.* given to the Scots, without which they would not have invaded England; besides many other things, that I now remember not.

B. I did not think there had been so great impudence and villainy in mankind.

A. You have not observed the world long enough to see all that is ill. Such was their remonstrance, as I have told you. With it they sent a petition, containing three points: 1. That his Majesty would deprive the bishops of their votes in Parliament, and remove such oppressions in religion, church-government, and discipline, as they had brought in; 2. That he should remove from his council all such as should promote the people's grievances, and employ in his great and public affairs such as the Parliament should confide in; 3. That he would not give away the lands escheated to the Crown by the rebellion in Ireland.

B. This last point, methinks, was not wisely put in at this time: it should have been reserved till they had subdued the rebels, against whom there were yet no forces sent over. It is like selling the lion's skin before they had killed him. But what answer was made to the other two propositions?

A. What answer should be made, but a denial? About the same time the King himself exhibited articles against six persons of the Parliament, five whereof were of the House of Commons and one of the House of Lords, accusing them of high-treason; and upon the 4th of January, went himself to the House of Commons to demand those five of them. But private notice having been given by some treacherous person about the King, they had

absented themselves; and by that means frustrated his Majesty's intentions. And after he was gone, the House making a heinous matter of it, and a high breach of their privileges, adjourned themselves into London, there to sit as a general committee, pretending they were not safe at Westminster: (for the King, when he went to the House to demand those persons, had somewhat more attendance with him, but not otherwise armed than his servants used to be, than he ordinarily had): and would not be pacified, though the King did afterwards waive the prosecution of those persons, unless he would also discover to them those that gave him counsel to go in that manner to the Parliament House, to the end they might receive condign punishment; which was the word they used instead of cruelty.

B. This was a harsh demand. Was it not enough that the King should forbear his enemies, but also that he must betray his friends? If they thus tyrannize over the King before they have gotten the sovereign power into their hands, how will they tyrannize over their fellow-subjects when they have gotten it?

A. So as they did.

B. How long stayed that committee in London?

A. Not above two or three days; and then were brought from London to the Parliament House by water in great triumph, guarded with a tumultuous number of armed men, there to sit in security in despite of the King, and make traitorous acts against him, such and as many as they listed; and under favour of these tumults, to frighten away from the House of Peers all such as were not of their own faction. For at this time the rabble was

PART II. so insolent, that scarce any of the bishops durst go to the House for fear of violence upon their persons: in so much as twelve of them excused themselves of coming thither; and by way of petition to the King, remonstrated that they were not permitted to go quietly to the performance of that duty, and protesting against all determinations, as of none effect, that should pass in the House of Lords during their forced absence. Which the House of Commons taking hold of, sent up to the Peers one of their members, to accuse them of high-treason. Whereupon ten of them were sent to the Tower; after which time there were no more words of their high-treason; but there passed a bill by which they were deprived of their votes in Parliament, and to this bill they got the King's assent. And, in the beginning of September after, they voted that the bishops should have no more to do in the government of the Church; but to this they had not the King's assent, the war being now begun.

B. What made the Parliament so averse to episcopacy; and especially the House of Lords, whereof the bishops were members? For I see no reason why they should do it to gratify a number of poor parish priests, that were Presbyterians, and that were never likely any way to serve the Lords; but, on the contrary, to do their best to pull down their power, and subject them to their synods and classes.

A. For the Lords, very few of them did perceive the intentions of the Presbyterians; and, besides that, they durst not, I believe, oppose the Lower House.

B. But why were the Lower House so earnest against them?

A. Because they meant to make use of their tenets, and with pretended sanctity to make the King and his party odious to the people, by whose help they were to set up democracy and depose the King, or to let him have the title only so long as he should act for their purposes. But not only the Parliament, but in a manner all the people of England, were their enemies, upon the account of their behaviour, as being, they said, too imperious. This was all that was colourably laid to their charge; the main cause of pulling them down, was the envy of the Presbyterians, that incensed the people against them, and against episcopacy itself.

B. How would the Presbyterians have the Church to be governed?

A. By national and provincial synods.

B. Is not this to make the national assembly an archbishop, and the provincial assemblies so many bishops?

A. Yes; but every minister shall have the delight of sharing the government, and consequently of being able to be revenged on them that do not admire their learning and help to fill their purses, and win to their service them that do.

B. It is a hard case, that there should be two factions to trouble the commonwealth, without any interest in it of their own, other than every particular man may have; and that their quarrels should be only about opinions, that is, about who has the most learning; as if their learning ought to be the rule of governing all the world. What is it they are learned in? Is it politics and rules of state? I know, it is called divinity; but I hear almost nothing preached but matter of philosophy.

PART II. For religion in itself admits no controversy. It is a law of the kingdom, and ought not to be disputed. I do not think they pretend to speak with God and know his will by any other way than reading the Scriptures, which we also do.

A. Yes, some of them do, and give themselves out for prophets by extraordinary inspiration. But the rest pretend only, for their advancement to benefices and charge of souls, a greater skill in the Scriptures than other men have, by reason of their breeding in the Universities, and knowledge there gotten of the Latin tongue, and some also of the Greek and Hebrew tongues, wherein the Scripture was written; besides their knowledge of natural philosophy, which is there publicly taught.

B. As for the Latin, Greek, and Hebrew tongues, it was once, to the detection of Roman fraud, and to the ejection of the Romish power, very profitable, or rather necessary; but now that is done, and we have the Scripture in English, and preaching in English, I see no great need of Latin, Greek, and Hebrew. I should think myself better qualified by understanding well the languages of our neighbours, French, Dutch, and Italian. I think it was never seen in the world, before the power of popes was set up, that philosophy was much conducing to power in a commonwealth.

B. But philosophy, together with divinity, have very much conduced to the advancement of the professors thereof to places of the greatest authority, next to the authority of kings themselves, in most of the ancient kingdoms of the world; as is manifestly to be seen in the history of those times.

B. I pray you cite me some of the authors and places.

A. First, what were the Druids of old time in Britanny and France? What authority these had you may see in Cæsar, Strabo, and others, and especially in Diodorus Siculus, the greatest antiquary perhaps that ever was; who speaking of the Druids, whom he calls Sarovides, in France, says thus:—"There be also amongst them certain philosophers and theologians, that are exceedingly honoured, whom they also use as prophets. These men, by their skill in augury and inspection into the bowels of the beasts sacrificed, foretell what is to come, and have the multitude obedient to them." And a little after,—"It is a custom amongst them, that no man may sacrifice without a philosopher; because, say they, men ought not to present their thanks to the Gods, but by them that know the divine nature, and are as it were of the same language with them; and that all good things ought by such as these to be prayed for."

B. I can hardly believe that those Druids were very skilful, either in natural philosophy, or moral.

A. Nor I; for they held and taught the transmigration of souls from one body to another, as did Pythagoras; which opinion whether they took from him, or he from them, I cannot tell.

What were the Magi in Persia, but philosophers and astrologers? You know how they came to find our Saviour by the conduct of a star, either from Persia itself, or from some country more eastward than Judea. Were not these in great authority in their country? And are they not in most parts of Christendom thought to have been Kings?

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Egypt hath been thought by many, the most ancient kingdom and nation of the world, and their priests had the greatest power in civil affairs, that any subjects ever had in any nation. And what were they but philosophers and divines? Concerning whom, the same Diodorus Siculus says thus: "The whole country of Egypt being divided into three parts, the body of the priests have one, as being of most credit with the people both for their devotion towards the Gods, and also for their understanding gotten by education;" and presently after, "For generally these men, in the greatest affairs of all, are the King's counsellors, partly executing, and partly informing and advising; foretelling him also, by their skill in astrology and art in the inspection of sacrifices, the things that are to come, and reading to him out of their holy books such of the actions there recorded as are profitable for him to know. It is not there as in Greece, one man or one woman that has the priesthood; but they are many that attend the honours and sacrifices of the Gods, and leave the same employment to their posterity, which, next to the King, have the greatest power and authority."

Concerning the judicature amongst the Egyptians, he saith thus: "From out of the most eminent cities, Hieropolis, Thebes, and Memphis, they choose judges, which are a council not inferior to that of Areopagus in Athens, or that of the senate in Lacedæmon. When they are met, being in number thirty, they choose one from amongst themselves to be chief-justice, and the city whereof he is, sendeth another in his place." This chief-justice wore about his neck, hung in a gold chain, a jewel of precious

stones, the name of which jewel was *truth;* which, when the chief-justice had put on, then began the pleading, &c.; and when the judges had agreed on the sentence, then did the chief-justice put this jewel of truth to one of the pleas. You see now what power was acquired in civil matters by the conjuncture of philosophy and divinity.

Let us come now to the commonwealth of the Jews. Was not the priesthood in a family, namely, the Levites, as well as the priesthood of Egypt? Did not the high-priest give judgment by the breast-plate of Urim and Thummim? Look upon the kingdom of Assyria, and the philosophers and Chaldeans. Had they not lands and cities belonging to their family, even in Abraham's time, who dwelt, you know, in Ur of the Chaldeans. Of these the same author says thus: "The Chaldeans are a sect in politics, like to that of the Egyptian priests; for being ordained for the service of the Gods, they spend the whole time of their life in philosophy; being of exceeding great reputation in astrology, and pretending much also to prophecy, foretelling things to come by purifications and sacrifices, and to find out by certain incantations the preventing of harm, and the bringing to pass of good. They have also skill in augury, and in the interpretation of dreams and wonders, nor are they unskilful in the art of foretelling by the inwards of beasts sacrificed; and have their learning not as the Greeks; for the philosophy of the Chaldeans goes to their family by tradition, and the son receives it from his father."

From Assyria let us pass into India, and see what esteem the philosophers had there. "The whole

PART II. multitude," says Diodorus, "of the Indians, is divided into seven parts; whereof the first, is the body of philosophers; for number the least, but for eminence the first; for they are free from taxes, and as they are not masters of others, so are no others masters of them. By private men they are called to the sacrifices and to the care of burials of the dead, as being thought most beloved of the Gods and skilful in the doctrine concerning hell; and for this employment receive gifts and honours very considerable. They are also of great use to the people of India; for being taken at the beginning of the year into the great assembly, they foretell them of great droughts, great rains, also of winds, and of sicknesses, and of whatsoever is profitable for them to know beforehand."

The same author, concerning the laws of the Æthiopians, saith thus: "The laws of the Æthiopians seem very different from those of other nations, and especially about the election of their Kings. For the priests propound some of the chief men amongst them, named in a catalogue, and whom the God (which, according to a certain custom, is carried about to feastings) does accept of; him the multitude elect for their King, and presently adore and honour him as a God, put into the government by divine providence. The King being chosen, he has the manner of his life limited to him by the laws, and does all other things according to the custom of the country, neither rewarding nor punishing any man otherwise than from the beginning is established amongst them by law. Nor use they to put any man to death, though he be condemned to it, but to send some officer to him with

a token of death; who seeing the token, goes presently to his house, and kills himself presently after. But the strangest thing of all is, that which they do concerning the death of their Kings. For the priests that live in Meroe, and spend their time about the worship and honour of the Gods, and are in greatest authority; when they have a mind to it, send a messenger to the King to bid him die, for that the Gods have given such order, and that the commandments of the immortals are not by any means to be neglected by those who are, by nature, mortal; using also other speeches to him, which men of simple judgment, and that have not reason enough to dispute against those unnecessary commands, as being educated in an old and indelible custom, are content to admit of. Therefore in former times the Kings did obey the priests, not as mastered by force and arms, but as having their reason mastered by superstition. But in the time of Ptolemy II, Ergamenes, King of the Æthiopians, having had his breeding in philosophy after the manner of the Greeks, being the first that durst dispute their power, took heart as befitted a King; came with soldiers to a place called Abaton, where was then the golden temple of the Æthiopians; killed all the priests, abolished the custom, and rectified the kingdom according to his will."

B. Though they that were killed were most damnable impostors, yet the act was cruel.

A. It was so. But were not the priests cruel, to cause their Kings, whom a little before they adored as Gods, to make away themselves? The King killed them, for the safety of his person; they him, out of ambition or love of change. The King's act

PART II. may be coloured with the good of his people; the priests had no pretence against their kings, who were certainly very godly, or else would never have obeyed the command of the priests by a messenger unarmed, to kill themselves. Our late King, the best King perhaps that ever was, you know, was murdered, having been first persecuted by war, at the incitement of Presbyterian ministers; who are therefore guilty of the death of all that fell in that war; which were, I believe, in England, Scotland, and Ireland, near 100,000 persons. Had it not been much better that those seditious ministers, which were not perhaps 1000, had been all killed before they had preached? It had been, I confess, a great massacre; but the killing of 100,000 is a greater.

B. I am glad the bishops were out of this business. As ambitious as some say they are, it did not appear in that business, for they were enemies to them that were in it.

A. But I intend not by these quotations to commend either the divinity or the philosophy of those heathen people; but to show only what the reputation of those sciences can effect among the people. For their divinity was nothing but idolatry; and their philosophy, (excepting the knowledge which the Egyptian priests, and from them the Chaldeans, had gotten by long observation and study in astronomy, geometry, and arithmetic), very little; and that in great part abused in astrology and fortune-telling. Whereas the divinity of the clergy of this nation, (considered apart from the mixture that has been introduced by the Church of Rome, and in part retained here, of the babbling philosophy of Aristotle and other Greeks, that has no affinity

with religion, and serves only to breed disaffection, dissension, and finally sedition and civil war, as we have lately found by dear experience in the differences between the Presbyterians and Episcopals), is the true religion. But for these differences both parties, as they came in power, not only suppressed the tenets of one another, but also whatsoever doctrine looked with an ill aspect upon their interest; and consequently all true philosophy, especially civil and moral, which can never appear propitious to ambition, or to an exemption from their obedience due to the sovereign power.

After the King had accused the Lord Kimbolton, a member of the House of Lords, and Hollis, Haslerigg, Hampden, Pym, and Stroud, five members of the Lower House, of high-treason; and after the Parliament had voted out the bishops from the House of Peers; they pursued especially two things in their petitions to his Majesty. The one was, that the King would declare who were the persons that advised him to go, as he did, to the Parliament-house to apprehend them, and that he would leave them to the Parliament to receive condign punishment; and this they did, to stick upon his Majesty the dishonour of deserting his friends, and betraying them to his enemies. The other was, that he would allow them a guard out of the city of London, to be commanded by the Earl of Essex; for which they pretended, they could not else sit in safety; which pretence was nothing but an upbraiding of his Majesty for coming to Parliament better accompanied than ordinary, to seize the said five seditious members.

B. I see no reason, in petitioning for a guard,

PART II. they should determine it to the city of London in particular, and the command by name to the Earl of Essex, unless they meant the King should understand it for a guard against himself.

A. Their meaning was, that the King should understand it so, and, as I verily believe, they meant he should take it for an affront: and the King himself understanding it so, denied to grant it; though he were willing, if they could not otherwise be satisfied, to command such a guard to wait upon them as he would be responsible for to God Almighty. Besides this, the city of London petitioned the King (put upon it, no doubt, by some members of the Lower House) to put the Tower of London into the hands of persons of trust, meaning such as the Parliament should approve of, and to appoint a guard for the safety of his Majesty and the Parliament. This method of bringing petitions in a tumultuary manner, by great multitudes of clamorous people, was ordinary with the House of Commons, whose ambition could never have been served by way of prayer and request, without extraordinary terror.

After the King had waived the prosecution of the five members, but denied to make known who had advised him to come in person to the House of Commons, they questioned the Attorney-General, who by the King's command had exhibited the articles against them, and voted him a breaker of the privilege of Parliament; and no doubt had made him feel their cruelty, if he had not speedily fled the land.

About the end of January, they made an order of both Houses of Parliament, to prevent the going over of popish commanders into Ireland; not so

much fearing that, as that by this the King himself choosing his commanders for that service, might aid himself out of Ireland against the Parliament. But this was no great matter, in respect of a petition they sent his Majesty about the same time, that is to say, about the 27th or 28th of January, 1641,* wherein they desired in effect the absolute sovereignty of England; though by the name of sovereignty they challenged it not whilst the King was living. For to the end that the fears and dangers of this kingdom might be removed, and the mischievous designs of those who are enemies to the peace of it, might be prevented, they pray, that his Majesty would be pleased to put forthwith, first, the Tower of London, second, all other forts, third, the whole militia of the kingdom, into the hands of such persons as should be recommended to him by both the Houses of Parliament. And this they style a necessary petition.

* Feb. 2nd, 1641

B. Were there really any such fears and dangers generally conceived here? Or did there appear any enemies at that time with such designs as are mentioned in the petition?

A. Yes. But no other fear of danger, but such as any discreet and honest man might justly have of the designs of the Parliament itself; who were the greatest enemies to the peace of the kingdom that could possibly be. It is also worth observing, that this petition began with these words, *Most gracious Sovereign:* so stupid they were as not to know, that he that is master of the militia, is master of the kingdom, and consequently is in possession of a most absolute sovereignty. The King was now at Windsor, to avoid the tumults of the common people before the gates of Whitehall, together with

PART II. their clamours and affronts there. The 9th of February after, he came to Hampton Court, and thence he went to Dover with the Queen, and the Princess of Orange, his daughter; where the Queen with the Princess of Orange embarked for Holland, but the King returned to Greenwich, whence he sent for the Prince of Wales and the Duke of York, and so went with them towards York.

B. Did the Lords join with the Commons in this petition for the militia?

A. It appears so by the title; but I believe they durst not but do it. The House of Commons took them but for a cypher; men of title only, without real power. Perhaps also the most of them thought, that the taking of the militia from the King would be an addition to their own power; but they were very much mistaken, for the House of Commons never intended they should be sharers in it.

B. What answer made the King to this petition?

A. The following: "His Majesty having well considered of this petition, and being desirous to express how willing he is to apply a remedy, not only to your *dangers*, but even to your *doubts* and *fears*, he therefore returns this answer, That when he shall know the extent of power which is intended to be established in those persons, whom you desire to be the commanders of the militia in the several counties, and likewise to what time it shall be limited, that no power shall be executed by his Majesty alone without the advice of Parliament, then he will declare, that (for the securing you from all dangers or jealousies of any) his Majesty will be content to put in all the places, both of forts and militia in the several counties, such persons as both the Houses of Parliament shall either approve, or

recommend unto him; so that you declare before unto his Majesty the names of the persons whom you approve or recommend, unless such persons shall be named, against whom he shall have just and unquestionable exception."

B. What power, for what time, and to whom, did the Parliament grant, concerning the militia?

A. The same power which the King had before planted in his lieutenants and deputy-lieutenants, in the several counties, and without other limitation of time but their own pleasure.

B. Who were the men that had this power?

A. There is a catalogue of them printed. They are very many, and most of them lords; nor is it necessary to have them named; for to name them is, in my opinion, to brand them with the mark of disloyalty or of folly. When they had made a catalogue of them, they sent it to the King, with a new petition for the militia. Also presently after, they sent a message to his Majesty, praying him to leave the Prince at Hampton Court; but the King granted neither.

B. Howsoever, it was well done of them to get hostages, if they could, of the King, before he went from them.

A. In the meantime, to raise money for the reducing of Ireland, the Parliament invited men to bring in money by way of adventure, according to these propositions. 1. That two millions and five hundred thousand acres of land in Ireland, should be assigned to the adventurers, in this proportion: For an adventure of 200*l.* 1,000 acres in Ulster.

. 300*l.* 1,000 acres in Connaught.

. 450*l.* 1,000 acres in Munster.

. 600*l.* 1,000 acres in Leinster.

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B. If he had not, I should have thought it a great wonder. What did the Parliament after this?

A. They sent him another petition, which was presented to him when he was at Theobald's, in his way to York; wherein they tell him plainly, that unless he be pleased to assure them by those messengers then sent, that he would speedily apply his royal assent to the satisfaction of their former desires, they shall be enforced, for the safety of his Majesty and his kingdoms, to dispose of the militia by the authority of both Houses, &c. They petition his Majesty also to let the Prince stay at St. James's, or some other of his Majesty's houses near London. They tell him also, that the power of raising, ordering, and disposing of the militia, cannot be granted to any corporation, without the authority and consent of the Parliament, and that those parts of the kingdom, which have put themselves into a posture of defence, have done nothing therein but by direction of both Houses, and what is justifiable by the laws of this kingdom.

B. What answer made the King to this?

A. It was a putting of themselves into arms, and under officers such as the Parliament should approve of. 4. They voted that his Majesty should be again desired that the Prince might continue about London. Lastly, they voted a declaration to be sent to his Majesty by both the Houses; wherein they accuse his Majesty of a design of altering religion, though not directly him, but them that counselled him; whom they also accused of being the inviters and fomenters of the Scotch war, and framers of the rebellion in Ireland; and upbraid the King again for accusing the Lord Kimbolton and the five members, and of being privy to the purpose of bringing up his army, which was raised against the Scots, to be employed against the Parliament. To which his Majesty sent his answer from Newmarket. Whereupon it was resolved by both Houses, that in this case of extreme danger and of his Majesty's refusal, the ordinance agreed upon by both Houses for the militia doth oblige the people by the fundamental laws of this kingdom; and also, that whosoever shall execute any power over the militia, by colour of any commission of lieutenancy, without consent of both Houses of Parliament, shall be accounted a disturber of the peace of the kingdom. Whereupon his Majesty sent a message to both Houses from Huntingdon, requiring obedience to the laws established, and prohibiting all subjects, upon pretence of their ordinance, to execute anything concerning the militia which is not by those laws warranted. Upon this, the Parliament vote a standing to their former votes; as also, that when the Lords and Commons in Parliament, which is the supreme court of judicature in

PART II. the kingdom, shall declare what the law of the land is, to have this not only questioned, but contradicted, is a high breach of the privilege of Parliament.

B. I thought that he that makes the law, ought to declare what the law is. For what is it else to to make a law, but to declare what it is? So that they have taken from the King, not only the militia, but also the legislative power.

A. They have so; but I make account that the legislative power, and indeed all power possible, is contained in the power of the militia. After this, they seize such money as was due to his Majesty upon the bill of tonnage and poundage, and upon the bill of subsidies, that they might disable him every way they possibly could. They sent him also many other contumelious messages and petitions after his coming to York; amongst which one was: "That whereas the Lord Admiral, by indisposition of body, could not command the fleet in person, he would be pleased to give authority to the Earl of Warwick to supply his place;" when they knew the King had put Sir John Pennington in it before.

B. To what end did the King entertain so many petitions, messages, declarations and remonstrances, and vouchsafe his answers to them, when he could not choose but clearly see they were resolved to take from him his royal power, and consequently his life? For it could not stand with their safety to let either him or his issue live, after they had done him so great injuries.

A. Besides this, the Parliament had at the same time a committee residing at York, to spy what his

Majesty did, and to inform the Parliament thereof, and also to hinder the King from gaining the people of that county to his party: so that when his Majesty was courting the gentlemen there, the committee was instigating the yeomanry against him. To which also the ministers did very much contribute; so that the King lost his opportunity at York.

B. Why did not the King seize the committee into his hands, or drive them out of town?

A. I know not; but I believe he knew the Parliament had a greater party than he, not only in Yorkshire but also in York. Towards the end of April, the King, upon petition of the people of Yorkshire to have the magazine of Hull to remain still there, for the greater security of the northern parts, thought fit to take it into his own hands. He had a little before appointed governor of that town the Earl of Newcastle. But the townsmen, having been already corrupted by the Parliament, refused to receive him, but refused not to receive Sir John Hotham, appointed to be governor by the Parliament. The King therefore coming before the town, guarded only by his own servants and a few gentlemen of the country thereabouts, was denied entrance by Sir John Hotham, that stood upon the wall; for which act he presently caused Sir John Hotham to be proclaimed traitor, and sent a message to the Parliament, requiring justice to be done upon the said Hotham, and that the town and magazine might be delivered into his hands. To which the Parliament made no answer, but instead thereof published another declaration, in which they omitted nothing of their former slanders against his Majesty's government, but inserted certain pro-

PART II. positions declarative of their own pretended right: viz. 1. That whatsoever they declare to be law, ought not to be questioned by the King: 2. That no precedents can be limits to bound their proceedings: 3. That a Parliament, for the public good, may dispose of anything wherein the King or subject hath a right; and that they, without the King, are this Parliament, and the judge of this public good, and that the King's consent is not necessary: 4. That no member of either House ought to be troubled for treason, felony, or any other crime, unless the cause be first brought before the Parliament, that they may judge of the fact and give leave to proceed, if they see cause: 5. That the sovereign power resides in both Houses, and that the King ought to have no negative voice: 6. That the levying of forces against the personal commands of the King (though accompanied with his presence) is not levying war against the King, but the levying war against his laws and authority (which they have power to declare and signify), though not against his person, is levying war against the King; and that treason cannot be committed against his person, otherwise than as he is entrusted with the kingdom and discharging that trust; and that they have a power to judge whether he discharge this trust or not: 7. That they may depose the King when they will.

B. This is plain dealing and without hypocrisy. Could the city of London swallow this?

A. Yes; and more too, if need be. London, you know, has a great belly, but no palate nor taste of right and wrong. In the Parliament-roll of Henry IV, amongst the articles of the oath the King at his

coronation took, there is one runs thus: *Concedes justas leges et consuetudines esse tenendas; et promittes per te eas esse protegendas, et ad honorem Dei corroborandas, quas vulgus elegerit.* Which the Parliament urged for their legislative authority, and therefore interpret *quas vulgus elegeret*, which the people shall choose; as if the King should swear to protect and corroborate laws before they were made, whether they be good or bad; whereas the words signify no more, but that he shall protect and corroborate such laws as they have chosen, that is to say, the Acts of Parliament then in being. And in the records of the Exchequer it is thus: *Will you grant to hold and keep the laws and rightful customs which the commonalty of this your kingdom have, and will you defend and uphold them? &c.* And this was the answer his Majesty made to that point.

B. And I think this answer very full and clear. But if the words were to be interpreted in the other sense, yet I see no reason why the King should be bound to swear to them. For Henry IV came to the Crown by the votes of a Parliament not much inferior in wickedness to this Long Parliament, that deposed and murdered their lawful King; saving that it was not the Parliament itself, but the usurper that murdered King Richard II.

A. About a week after, in the beginning of May, the Parliament sent the King another paper, which they styled the humble petition and advice of both Houses, containing nineteen propositions; which when you shall hear, you shall be able to judge what power they meant to leave to the King more than to any one of his subjects. The first of them is this:

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1. That the Lords and others of his Majesty's privy-council, and all great officers of state, both at home and abroad, be put from their employments and from his council, save only such as should be approved of by both Houses of Parliament; and none put into their places but by approbation of the said Houses. And that all privy-councillors take an oath for the due execution of their places, in such form as shall be agreed upon by the said Houses.

2. That the great affairs of the kingdom be debated, resolved, and transacted only in Parliament; and such as shall presume to do any thing to the contrary, be reserved to the censure of the Parliament; and such other matters of the state as are proper for his Majesty's privy-council, shall be debated and concluded by such as shall from time to time be chosen for that place by both Houses of Parliament; and that no public act concerning the affairs of the kingdom, which is proper for his Majesty's privy-council, be esteemed valid, as proceeding from the royal authority, unless it be done by the advice and consent of the major part of the council, attested under their hands; and that the council be not more than twenty-five, nor less than fifteen; and that when a councillor's place falls void in the interval of Parliament, it shall not be supplied without the assent of the major part of the council; and that such choice also shall be void, if the next Parliament after confirm it not.

3. That the Lord High Steward of England, Lord High Constable, Lord Chancellor, or Lord Keeper of the Great Seal, Lord Treasurer, Lord Privy-Seal, Earl Marshal, Lord Admiral, Warden of the Cinque

Ports, Chief Governor of Ireland, Chancellor of the Exchequer, Master of the Wards, Secretaries of State, two Chief Justices and Chief Baron, be always chosen with the approbation of both Houses of Parliament; and in the intervals of Parliament, by the major part of the privy-council.

4. That the government of the King's children shall be committed to such as both Houses shall approve of; and in the intervals of Parliament, such as the privy-council shall approve of; that the servants then about them, against whom the Houses have just exception, should be removed.

5. That no marriage be concluded or treated of for any of the King's children, without consent of Parliament.

6. That the laws in force against Jesuits, priests, and popish recusants, be strictly put in execution.

7. That the votes of Popish lords in the House of Peers be taken away, and that a bill be passed for the education of the children of Papists in the Protestant religion.

8. That the King will be pleased to reform the Church-government and liturgy in such manner as both Houses of Parliament shall advise.

9. That he would be pleased to rest satisfied with that course that the Lords and Commons have appointed for ordering the militia, and recal his declarations and proclamations against it.

10. That such members as have been put out of any place or office since this Parliament began, may be restored, or have satisfaction.

11. That all privy-councillors and judges take an oath, (the form whereof shall be agreed on and settled by act of Parliament), for the maintain-

PART II. ing of the Petition of Right, and of certain statutes made by the Parliament.

12. That all the judges and officers placed by approbation of both Houses of Parliament, may hold their places *quam diu bene se gesserint.*

13. That the justice of Parliament may pass upon all delinquents, whether they be within the kingdom or fled out of it; and that all persons cited by either House of Parliament, may appear and abide the censure of Parliament.

14. That the general pardon offered by his Majesty, be granted with such exceptions as shall be advised by both Houses of Parliament.

B. What a spiteful article was this! All the rest proceeded from ambition, which many times well-natured men are subject to; but this proceeded from an inhuman and devilish cruelty.

A. 15. That the forts and castles be put under the command of such persons as, with the approbation of the Parliament, the King shall appoint.

16. That the extraordinary guards about the King be discharged; and for the future none raised but according to the law, in case of actual rebellion or invasion.

B. Methinks these very propositions sent to the King are an actual rebellion.

A. 17. That his Majesty enter into a more strict alliance with the United Provinces, and other neighbour Protestant Princes and States.

18. That his Majesty be pleased, by act of Parliament, to clear the Lord Kimbolton and the five members of the House of Commons, in such manner as that future Parliaments may be secured from the consequence of that evil precedent.

19. That his Majesty be pleased to pass a bill for restraining peers made hereafter from sitting or voting in Parliament, unless they be admitted with consent of both Houses of Parliament.

These propositions granted, they promise to apply themselves to regulate his Majesty's revenue to his best advantage, and to settle it to the support of his royal dignity in honour and plenty; and also to put the town of Hull into such hands as his Majesty shall appoint with consent of Parliament.

B. Is not that to put it into such hands as his Majesty shall appoint by the consent of the petitioners, which is no more than to keep it in their hands as it is? Did they want, or think the King wanted, common-sense, so as not to perceive that their promise herein was worth nothing?

A. After the sending of these propositions to the King, and his Majesty's refusal to grant them, they began, on both sides, to prepare for war. The King raised a guard for his person in Yorkshire, and the Parliament, thereupon having voted that the King intended to make war upon his Parliament, gave order for the mustering and exercising the people in arms, and published propositions to invite and encourage them to bring in either ready money or plate, or to promise under their hands to furnish and maintain certain numbers of horse, horsemen, and arms, for the defence of the King and Parliament, (meaning by King, as they had formerly declared, not his person, but his laws); promising to repay their money with interest of 8*l.* in the 100*l.* and the value of their plate with twelve-pence the ounce for the fashion. On the other side, the King came to Nottingham, and there did set up his stan-

PART II. dard royal, and sent out commissions of array to call those to him, which by the ancient laws of England were bound to serve him in the wars. Upon this occasion there passed divers declarations between the King and Parliament concerning the legality of this array, which are too long to tell you at this time.

B. Nor do I desire to hear any mooting about this question. For I think that general law of *salus populi*, and the right of defending himself against those that had taken from him the sovereign power, are sufficient to make legal whatsoever he should do in order to the recovery of his kingdom, or to the punishing of the rebels.

A. In the meantime the Parliament raised an army, and made the Earl of Essex general thereof; by which act they declared what they meant formerly, when they petitioned the King for a guard to be commanded by the said Earl of Essex. And now the King sends out his proclamations, forbidding obedience to the orders of the Parliament concerning the militia; and the Parliament send out orders against the execution of the commissions of array. Hitherto, though it were a war before, yet there was no blood shed; they shot at one another nothing but paper.

B. I understand now, how the Parliament destroyed the peace of the kingdom; and how easily, by the help of seditious Presbyterian ministers and of ambitious ignorant orators, they reduced this government into anarchy. But I believe it will be a harder task for them to bring in peace again, and settle the government, either in themselves, or any other governor, or form of government. For, granting that they obtained the victory in this war, they

must be beholden for it to the valour, good conduct, or felicity of those to whom they give the command of their armies; especially to the general, whose good success will, without doubt, draw with it the love and admiration of the soldiers; so that it will be in his power, either to take the government upon himself, or to place it where himself thinks good. In which case, if he take it not to himself, he will be thought a fool; and if he do, he shall be sure to have the envy of his subordinate commanders, who look for a share either in the present government, or in the succession to it. For they will say: "Has he obtained his power by his own, without our danger, valour, and counsel; and must we be his slaves, whom we have thus raised? Or, is not there as much justice on our side against him, as was on his side against the King?"

A. They will, and did; insomuch, that it was the reason why Cromwell, after he had gotten into his own hands the absolute power of England, Scotland, and Ireland, by the name of Protector, did never dare to take upon him the title of King, nor was ever able to settle it upon his children. His officers would not suffer it, as pretending after his death to succeed him; nor would the army consent to it, because he had ever declared to them against the government of a single person.

B. But to return to the King. What means had he to pay, what provision had he to arm, nay, means to levy, an army able to resist the army of the Parliament, maintained by the great purse of the city of London and contributions of almost all the towns corporate in England, and furnished with arms as fully as they could require?

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A. It is true, the King had great disadvantages, and yet by little and little he got a considerable army, with which he so prospered as to grow stronger every day, and the Parliament weaker, till they had gotten the Scotch with an army of 21,000 men to come into England to their assistance. But to enter into the particular narration of what was done in the war, I have not now time.

B. Well then, we will talk of that at next meeting.

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B. We left at the preparations on both sides for war; which when I considered by myself, I was mightily puzzled to find out what possibility there was for the King to equal the Parliament in such a course, and what hopes he had of money, men, arms, fortified places, shipping, counsel, and military officers, sufficient for such an enterprise against the Parliament, that had men and money as much at command, as the city of London, and other corporation towns, were able to furnish, which was more than they needed. And for the men they should set forth for soldiers, they were almost all of them spitefully bent against the King and his whole party, whom they took to be either papists, or flatterers of the King, or that had designed to raise their fortunes by the plunder of the city and other corporation towns. And though I believe not that they were more valiant than other men, nor that they had so much experience in the war as to be accounted good soldiers; yet they had that in them, which in time of battle is more conducing to victory than valour and experience both together; and that was spite. PART III.

And for arms, they had in their hands the chief magazines, the Tower of London, and the town of Kingston-upon-Hull; besides most of the powder and shot that lay in several towns for the use of the trained bands.

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Fortified places, there were not many then in England, and most of them in the hands of the Parliament.

The King's fleet was wholly in their command, under the Earl of Warwick.

Counsellors, they needed no more than such as were of their own body.

So that the King was every way inferior to them, except it were, perhaps, in officers.

A. I cannot compare their chief officers. For the Parliament, the Earl of Essex, after the Parliament had voted the war, was made general of all their forces both in England and Ireland, from whom all other commanders were to receive their commissions.

B. What moved them to make general the Earl of Essex? And for what cause was the Earl of Essex so displeased with the King, as to accept that office?

A. I do not certainly know what to answer to either of those questions; but the Earl of Essex had been in the wars abroad, and wanted neither experience, judgment, nor courage, to perform such an undertaking. And besides that, you have heard, I believe, how great a darling of the people his father had been before him, and what honour he had gotten by the success of his enterprise upon Calais, and in some other military actions. To which I may add, that this Earl himself was not held by the people to be so great a favourite at court as that they might not trust him with their army against the King. And by this, you may perhaps conjecture the cause for which the Parliament made choice of him for general.

B. But why did they think him discontented with the Court?

A. I know not that; nor indeed that he was so. He came to the court, as other noblemen did, when occasion was, to wait upon the King; but had no office, till a little before this time, to oblige him to be there continually. But I believe verily, that the unfortunateness of his marriages, had so discountenanced his conversation with the ladies, that the court could not be his proper element, unless he had had some extraordinary favour there to balance that calamity. But for some particular discontent from the King, or intention of revenge for any supposed disgrace, I think he had none, nor that he was any ways addicted to Presbyterian doctrines, or other fanatic tenets in Church or State; saving only that he was carried away with the stream, in a manner, of the whole nation, to think that England was not an absolute, but a mixed monarchy; not considering that the supreme power must always be absolute, whether it be in the King or in the Parliament.

B. Who was the general of the King's army?

A. None yet but himself; nor indeed had he yet any army. But there coming to him at that time his two nephews, the Princes Rupert and Maurice, he put the command of his horse into the hands of Prince Rupert, a man than whom no man living has a better courage, nor was more active and diligent in prosecuting his commissions; and, though but a young man then, was not without experience in the conducting of soldiers, as having been an actor in part of his father's wars in Germany.

B. But how could the King find money to pay such an army as was necessary for him against the Parliament?

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A. Neither the King nor Parliament had much money at that time in their own hands, but were fain to rely upon the benevolence of those that took their parts. Wherein, I confess, the Parliament had a mighty great advantage. Those that helped the King in that kind, were only lords and gentlemen, which, not approving the proceedings of the Parliament, were willing to undertake the payment, every one, of a certain number of horse; which cannot be thought any very great assistance, the persons that payed them being so few. For other moneys that the King then had, I have not heard of any, but what he borrowed upon jewels in the Low Countries. Whereas the Parliament had a very plentiful contribution, not only from London, but generally from their faction in all other places of England, upon certain propositions, published by the Lords and Commons in June 1642, (at what time they had newly voted that the King intended to make war upon them), for bringing in of money or plate to maintain horse and horsemen, and to buy arms for the preservation of the public peace, and for the defence of the King and both Houses of Parliament; for the re-payment of which money and plate, they were to have the public faith.

B. What public faith is there, when there is no public? What is it that can be called public, in a civil war, without the King?

A. The truth is, the security was nothing worth, but served well enough to gull those seditious blockheads, that were more fond of change than either of their peace or profit.

Having by this means gotten contributions from those that were well-affected to their cause,

they made use of it afterwards to force the like contribution from others. For in November following, they made an ordinance for assessing also of those that had not contributed then, or had contributed, but not proportionably to their estates. And yet this was contrary to what the Parliament promised and declared in the propositions themselves. For they declared, in the first proposition, that no man's affections should be measured by the proportion of his offer, so that he expressed his good will to the service in any proportion whatsoever.

Besides this, in the beginning of March following, they made an ordinance, to levy weekly a great sum of money upon every county, city, town, place, and person of any estate almost, in England; which weekly sum, as may appear by the ordinance itself, printed and published in March 1642 by order of both Houses, comes to almost 33,000*l.*, and consequently to above 1,700,000*l.* for the year. They had, besides all this, the profits of the King's lands and woods, and whatsoever was remaining unpaid of any subsidy formerly granted him, and the tonnage and poundage usually received by the King; besides the profit of the sequestrations of great persons, whom they pleased to vote delinquents, and the profits of the bishops' lands, which they took to themselves a year, or a little more, after.

B. Seeing then the Parliament had such advantage of the King in money and arms and multitude of men, and had in their hands the King's fleet, I cannot imagine what hope the King could have, either of victory (unless he resigned into their hands the sovereignty), or subsisting. For I cannot well believe he had any advantage of them

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either in counsellors, conductors, or in the resolutions of his soldiers.

A. On the contrary, I think he had also some disadvantage in that; for though he had as good officers at least as any then served the Parliament, yet I doubt he had not so useful counsel as was necessary. And for his soldiers, though they were men as stout as theirs, yet, because their valour was not sharpened so with malice as theirs was on the other side, they fought not so keenly as their enemies did: amongst whom there were a great many London apprentices, who, for want of experience in the war, would have been fearful enough of death and wounds approaching visibly in glistering swords; but, for want of judgment, scarce thought of such death as comes invisibly in a bullet, and therefore were very hardly to be driven out of the field.

B. But what fault do you find in the King's counsellors, lords, and other persons of quality and experience?

A. Only that fault, which was generally in the whole nation, which was, that they thought the government of England was not an absolute, but a mixed monarchy; and that if the King should clearly subdue this Parliament, that his power would be what he pleased, and theirs as little as he pleased: which they counted tyranny. This opinion, though it did not lessen their endeavour to gain the victory for the King in a battle, when a battle could not be avoided, yet it weakened their endeavour to procure him an absolute victory in the war. And for this cause, notwithstanding that they saw that the Parliament was firmly resolved to take all kingly power

whatsoever out of his hands, yet their counsel to the King was upon all occasions, to offer propositions to them of treaty and accommodation, and to make and publish declarations; which any man might easily have foreseen would be fruitless; and not only so, but also of great disadvantage to those actions by which the King was to recover his crown and preserve his life. For it took off the courage of the best and forwardest of his soldiers, that looked for great benefit by their service out of the estates of the rebels, in case they could subdue them; but none at all, if the business should be ended by a treaty.

B. And they had reason: for a civil war never ends by treaty, without the sacrifice of those who were on both sides the sharpest. You know well enough how things passed at the reconciliation of Augustus and Antonius in Rome. But I thought that after they once began to levy soldiers one against another, that they would not any more have returned of either side to declarations, or other paper war, which, if it could have done any good, would have done it long before this.

A. But seeing the Parliament continued writing, and set forth their declarations to the people against the lawfulness of the King's commission of array, and sent petitions to the King as fierce and rebellious as ever they had done before, demanding of him that he would disband his soldiers, and come up to the Parliament, and leave those whom the Parliament called delinquents (which were none but the King's best subjects) to their mercy, and pass such bills as they should advise him; would you not have the King set forth declarations and

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proclamations against the illegality of their ordinances, by which they levied soldiers against him, and answer those insolent petitions of theirs?

B. No; it had done him no good before, and therefore was not likely to do him any afterwards. For the common people, whose hands were to decide the controversy, understood not the reasons of either party; and for those that by ambition were once set upon the enterprise of changing the government, they cared not much what was reason and justice in the cause, but what strength they might procure by reducing the multitude with remonstrances from the Parliament House, or by sermons in the churches. And to their petitions, I would not have had any answer made at all, more than this; that if they would disband their army, and put themselves upon his mercy, they should find him more gracious than they expected.

A. That had been a gallant answer indeed, if it had proceeded from him after some extraordinary great victory in battle, or some extraordinary assurance of a victory at last in the whole war.

B. Why, what could have happened to him worse than at length he suffered, notwithstanding his gentle answers and all his reasonable declarations?

A. Nothing; but who knew that?

B. Any man might see that he was never likely to be restored to his right without victory: and such his stoutness being known to the people, would have brought to his assistance many more hands than all the arguments of law or force of eloquence, couched in declarations and other writings, could have done by far. And I wonder what kind of men

they were, that hindered the King from taking this resolution ?

A. You may know by the declarations themselves, which are very long and full of quotations of records and of cases formerly reported, that the penners of them were either lawyers by profession, or such gentlemen as had the ambition to be thought so. Besides, I told you before, that those which were then likeliest to have their counsel asked in this business, were averse to absolute monarchy, as also to absolute democracy or aristocracy; all which governments they esteemed tyranny, and were in love with monarchy which they used to praise by the name of mixed monarchy, though it were indeed nothing else but pure anarchy. And those men, whose pens the King most used in these controversies of law and politics, were such, if I have not been misinformed, as having been members of this Parliament, had declaimed against ship-money and other extra-parliamentary taxes, as much as any; but who when they saw the Parliament grow higher in their demands than they thought they would have done, went over to the King's party.

B. Who were those ?

A. It is not necessary to name any man, seeing I have undertaken only a short narration of the follies and other faults of men during this trouble; but not, by naming the persons, to give you, or any man else, occasion to esteem them the less, now that the faults on all sides have been forgiven.

B. When the business was brought to this height, by levying of soldiers and seizing of the navy and arms and other provisions on both sides, that no man was so blind as not to see they were in an

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A. You have forgotten that I told you, that the King himself, by a bill that he passed at the same time when he passed the bill for the execution of the Earl of Strafford, had given them authority to hold the Parliament till they should by consent of both Houses dissolve themselves. If therefore he had, by any proclamation or message to the Houses, dissolved them, they would to their former defamations of his Majesty's actions have added this, that he was a breaker of his word: and not only in contempt of him have continued their session, but also have made an advantage of it to the increase and strengthening of their own party.

B. Would not the King's raising of an army against them be interpreted as a purpose to dissolve them by force? And was it not as great a breach of promise to scatter them by force, as to dissolve them by proclamation? Besides, I cannot conceive that the passing of that act was otherwise intended than conditionally; so long as they should not ordain any thing contrary to the sovereign right of the King; which condition they had already by many of their ordinances broken. And I think that even by the law of equity, which is the unalterable law of nature, a man that has the sovereign power, cannot, if he would, give away the right of anything which is necessary for him to retain for the good government of his subjects, unless he do it in express words, saying, that he will have the

sovereign power no longer. For the giving away that, which by consequence only, draws the sovereignty along with it, is not, I think, a giving away of the sovereignty; but an error, such as works nothing but an invalidity in the grant itself. And such was the King's passing of this bill for the continuing of the Parliament as long as the two Houses pleased. But now that the war was resolved on on both sides, what needed any more dispute in writing?

A. I know not what need they had. But on both sides they thought it needful to hinder one another, as much as they could, from levying of soldiers; and, therefore, the King did set forth declarations in print, to make the people know that they ought not to obey the officers of the new militia set up by ordinance of Parliament, and also to let them see the legality of his own commissions of array. And the Parliament on their part did the like, to justify to the people the said ordinance, and to make the commission of array appear unlawful.

B. When the Parliament were levying of soldiers, was it not lawful for the King to levy soldiers to defend himself and his right, though there had been no other title for it but his own preservation, and that the name of commission of array had never before been heard of?

A. For my part, I think there cannot be a better title for war, than the defence of a man's own right. But the people, at that time, thought nothing lawful for the King to do, for which there was not some statute made by Parliament. For the lawyers, I mean the judges of the courts at Westminster, and some few others, though but advocates, yet of great

PART III. reputation for their skill in the common-laws and statutes of England, had infected most of the gentry of England with their maxims and cases prejudged, which they call precedents; and made them think so well of their own knowledge in the law, that they were very glad of this occasion to shew it against the King, and thereby to gain a reputation with the Parliament of being good patriots, and wise statesmen.

B. What was this commission of array?

A. King William the Conqueror had gotten into his hands by victory all the land in England, of which he disposed some part as forests and chases for his recreation, and some part to lords and gentlemen that had assisted him or were to assist him in the wars. Upon which he laid a charge of service in his wars, some with more men, and some with less, according to the lands he had given them: whereby, when the King sent men unto them with commission to make use of their service, they were obliged to appear with arms, and to accompany the King to the wars for a certain time at their own charges: and such were the commissions by which this King did then make his levies.

B. Why then was it not legal?

A. No doubt but it was legal. But what did that amount to with men, that were already resolved to acknowledge for law nothing that was against their design of abolishing monarchy, and placing a sovereign and absolute arbitrary power in the House of Commons.

B. To destroy monarchy, and set up the House of Commons, are two businesses.

A. They found it so at last, but did not think it so then.

B. Let us now come to the military part.

A. I intended only the story of their injustice, impudence, and hypocrisy; therefore, for the proceeding of the war, I refer you to the history thereof written at large in English. I shall only make use of such a thread as is necessary for the filling up of such knavery, and folly also, as I shall observe in their several actions.

From York the King went to Hull, where was his magazine of arms for the northern parts of England, to try if they would admit him. The Parliament had made Sir John Hotham governor of the town, who caused the gates to be shut, and presenting himself upon the walls flatly denied him entrance: for which the King caused him to be proclaimed traitor, and sent a message to the Parliament to know if they owned the action.

B. Upon what grounds?

A. Their pretence was this; that neither this nor any other town in England was otherwise the King's, than in trust for the people of England.

B. But what was that to the Parliament?

A. Yes, say they; for we are the representatives of the people of England.

B. I cannot see the force of this argument: we represent the people, *ergo*, all that the people has is ours. The mayor of Hull did represent the King. Is therefore all that the King had in Hull, the mayor's? The people of England may be represented with limitations, as to deliver a petition or the like. Does it follow that they, who deliver the petition, have right to all the towns in England? When began this Parliament to be a representative of England? Was it not November 3, 1640? Who was

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it the day before, that is November 2, that had the right to keep the King out of Hull and possess it for themselves? For there was then no Parliament. Whose was Hull then?

A. I think it was the King's, not only because it was called the King's town upon Hull, but because the King himself did then and ever represent the person of the people of England. If he did not, who then did, the Parliament having no being?

B. They might perhaps say, the people had then no representative.

A. Then there was no commonwealth; and consequently, all the towns of England being the people's, you, and I, and any man else, might have put in for his share. You may see by this what weak people they were, that were carried into the rebellion by such reasoning as the Parliament used, and how impudent they were that did put such fallacies upon them.

B. Surely they were such as were esteemed the wisest men in England, being upon that account chosen to be of the Parliament.

A. And were they also esteemed the wisest men of England, that chose them?

B. I cannot tell that. For I know it is usual with the freeholders in the counties, and the tradesmen in the cities and boroughs, to choose, as near as they can, such as are most repugnant to the giving of subsidies.

A. The King in the beginning of August, after he had summoned Hull, and tried some of the counties thereabout what they would do for him, sets up his standard at Nottingham; but there came not in thither men enough to make an army sufficient

to give battle to the Earl of Essex. From thence he went to Shrewsbury, where he was quickly furnished; and appointing the Earl of Lindsey to be general, he resolved to march towards London. The Earl of Essex was now at Worcester with the Parliament's army, making no offer to stop him in his passage; but as soon as he was gone by, marched close after him.

The King, therefore, to avoid being enclosed between the army of the Earl of Essex and the city of London, turned upon him and gave him battle at Edgehill: where though he got not an entire victory, yet he had the better, if either had the better; and had certainly the fruit of a victory, which was to march on in his intended way towards London: in which the next morning he took Banbury-castle, and from thence went to Oxford, and thence to Brentford, where he gave a great defeat to three regiments of the Parliament's forces, and so returned to Oxford.

B. Why did not the King go on from Brentford?

A. The Parliament, upon the first notice of the King's marching from Shrewsbury, caused all the trained-bands and the auxiliaries of the city of London (which was so frightened as to shut up all their shops) to be drawn forth; so that there was a most complete and numerous army ready for the Earl of Essex, that was crept into London just at the time to head it. And this was it that made the King retire to Oxford. In the beginning of February after, Prince Rupert took Cirencester from the Parliament, with many prisoners and many arms: for it was newly made a magazine. And thus stood the business between the King's and the Parlia-

PART III. ment's greatest forces. The Parliament in the meantime caused a line of communication to be made about London and the suburbs, of twelve miles in compass; and constituted a committee for the association, and the putting into a posture of defence, of the counties of Essex, Cambridge, Suffolk, and some others; and one of these commissioners was Oliver Cromwell, from which employment he came to his following greatness.

B. What was done during this time in other parts of the country?

A. In the west, the Earl of Stamford had the employment of putting in execution the ordinance of Parliament for the militia; and Sir Ralph Hopton for the King executed the commission of array. Between these two was fought a battle at Liskeard in Cornwall, wherein Sir Ralph Hopton had the victory, and presently took a town called Saltash, with many arms and much ordnance and many prisoners. Sir William Waller in the meantime seized Winchester and Chichester for the Parliament. In the north, for the commission of array, my Lord of Newcastle, and for the militia of the Parliament was my Lord Fairfax. My Lord of Newcastle took from the Parliament Tadcaster, in which were a great part of the Parliament's forces for that country, and had made himself, in a manner, master of all the north. About this time, that is to say in February, the Queen landed at Burlington, and was conducted by my Lord of Newcastle and the Marquis of Montrose to York, and not long after to the King. Divers other little advantages, besides these, the King's party had of the Parliament's in the north.

There happened also between the militia of the Parliament and the Commission of Array in Staffordshire, under my Lord Brook for the Parliament and my Lord of Northampton for the King, great contention, wherein both these commanders were slain. For my Lord Brook, besieging Litchfield-Close, was killed with a shot; notwithstanding which they gave not over the siege till they were masters of the Close. But presently after, my Lord of Northampton besieged it again for the King; which to relieve, Sir William Brereton and Sir John Gell advanced towards Litchfield, and were met at Hopton Heath by the Earl of Northampton, and routed. The Earl himself was slain; but his forces with victory returned to the siege again; and shortly after, seconded by Prince Rupert, who was then abroad in that country, carried the place. These were the chief actions of this year, 1642; wherein the King's party had not much the worse.

B. But the Parliament had now a better army; insomuch that if the Earl of Essex had immediately followed the King to Oxford, not yet well fortified, he might in all likelihood have taken it. For he could not want either men or ammunition, whereof the city of London, which was wholly at the Parliament's devotion, had store enough.

A. I cannot judge of that. But this is manifest, considering the estate the King was in at his first marching from York, when he had neither money nor men nor arms enough to put them in hope of victory, that this year, take it altogether, was very prosperous.

B. But what great folly or wickedness do you observe in the Parliament's actions for this first year?

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A. All that can be said against them in that point, will be excused with the pretext of war, and come under one name of rebellion; saving that when they summoned any town, it was always in the name of King and Parliament, the King being in the contrary army, and many times beating them from the siege. I do not see how the right of war can justify such impudence as that. But they pretended that the King was always virtually in the two Houses of Parliament; making a distinction between his person natural and politic; which made the impudence the greater, besides the folly of it. For this was but an university quibble, such as boys make use of in maintaining in the schools such tenets as they cannot otherwise defend.

In the end of this year they solicited also the Scots to enter England with an army, to suppress the power of the Earl of Newcastle in the North; which was a plain confession, that the Parliament's forces were, at this time, inferior to the King's. And most men thought, that if the Earl of Newcastle had then marched southward, and joined his forces with the King's, most of the members of Parliament would have fled out of England.

In the beginning of 1643 the Parliament, seeing the Earl of Newcastle's power in the North grown so formidable, sent to the Scots to hire them to an invasion of England, and (to compliment them in the meantime) made a covenant amongst themselves, such as the Scots had before taken against episcopacy, and demolished crosses and church-windows, such as had in them any images of saints, throughout all England. Also in the middle of the year, they made a solemn league with the nation, which was called the Solemn League and Covenant.

B. Are not the Scots as properly to be called foreigners as the Irish? Seeing then they persecuted the Earl of Strafford even to death, for advising the King to make use of Irish forces against the Parliament, with what face could they call in a Scotch army against the King?

A. The King's party might easily here have discerned their design, to make themselves absolute masters of the kingdom and to dethrone the King. Another great impudence, or rather a bestial incivility, it was of theirs, that they voted the Queen a traitor, for helping the King with some ammunition and English forces from Holland.

B. Was it possible that all this could be done, and men not see that papers and declarations must be useless; and that nothing could satisfy them but the deposing of the King, and setting up of themselves in his place?

A. Yes; very possible. For who was there of them, though knowing that the King had the sovereign power, that knew the essential rights of sovereignty? They dreamt of a mixed power, of the King and the two Houses. That it was a divided power, in which there could be no peace, was above their understanding. Therefore they were always urging the King to declarations and treaties, for fear of subjecting themselves to the King in an absolute obedience; which increased the hope and courage of the rebels, but did the King little good. For the people either understand not, or will not trouble themselves with controversies in writing, but rather, by his compliance and messages, go away with an opinion that the Parliament was likely to have the victory in the war. Besides, seeing the penners

PART III. and contrivers of these papers were formerly members of the Parliament, and of another mind, and now revolted from the Parliament because they could not bear that sway in the House which they expected, men were apt to think they believed not what they writ.

As for military actions (to begin at the head quarters) Prince Rupert took Birmingham, a garrison of the Parliament's. In July after, the King's forces had a great victory over the Parliament's, near Devizes on Roundway-Down, where they took 2,000 prisoners, four brass pieces of ordnance, twenty-eight colours, and all their baggage; and shortly after, Bristol was surrendered to Prince Rupert for the King; and the King himself marching into the west, took from the Parliament many other considerable places.

But this good fortune was not a little allayed by his besieging of Gloucester, which after it was reduced to the last gasp, was relieved by the Earl of Essex; whose army was before greatly wasted, but now suddenly recruited with the trained bands and apprentices of London.

B. It seems not only by this, but also by many examples in history, that there can hardly arise a long or dangerous rebellion, that has not some such overgrown city with an army or two in its belly to foment it.

A. Nay more; those great capital cities, when rebellion is upon pretence of grievances, must needs be of the rebel party: because the grievances are but taxes, to which citizens, that is, merchants, whose profession is their private gain, are naturally mortal enemies; their only glory being to

grow excessively rich by the wisdom of buying and selling. PART III.

B. But they are said to be of all callings the most benefical to the commonwealth, by setting the poorer sort of people on work.

A. That is to say, by making poor people sell their labour to them at their own prices; so that poor people, for the most part, might get a better living by working in Bridewell, than by spinning, weaving, and other such labour as they can do; saving that by working slightly they may help themselves a little, to the disgrace of our manufacture. And as most commonly they are the first encouragers of rebellion, presuming of their strength; so also are they, for the most part, the first to repent, deceived by them that command their strength.

But to return to the war; though the King withdrew from Gloucester, yet it was not to fly from, but to fight with the Earl of Essex, which presently after he did at Newbury, where the battle was bloody, and the King had not the worst, unless Cirencester be put into the scale, which the Earl of Essex had in his way a few days before surprised.

But in the north and the west, the King had much the better of the Parliament. For in the north, at the very beginning of the year, March 29th, the Earls of Newcastle and Cumberland defeated the Lord Fairfax, who commanded in those parts for the Parliament, at Bramham Moor; which made the Parliament to hasten the assistance of the Scots.

In June following the Earl of Newcastle routed Sir Thomas Fairfax, son to the Lord Fairfax, upon Adderton Heath, and, in pursuit of them to Brad-

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ford, took and killed 2,000 men, and the next day took the town and 2,000 prisoners more (Sir Thomas himself hardly escaping) with all their arms and ammunition ; and besides this, made the Lord Fairfax quit Halifax and Beverley. Lastly, Prince Rupert relieved Newark, besieged by Sir John Meldrun for the Parliament with 7,000 men, whereof 1,000 were slain ; the rest upon articles departed, leaving behind them their arms, bag and baggage.

To balance in part this success, the Earl of Manchester, whose lieutenant-general was Oliver Cromwell, got a victory over the royalists near Horncastle, of whom he slew 400, took 800 prisoners and 1,000 arms, and presently after took and plundered the city of Lincoln.

In the West, May the 16th, Sir Ralph Hopton at Stratton, in Cornwall, had a victory over the Parliamentarians, wherein he took 1700 prisoners, thirteen brass pieces of ordnance, and all their ammunition, which was seventy barrels of powder ; and the magazine of their other provisions in the town.

Again at Lansdown, between Sir Ralph Hopton and the Parliamentarians under Sir William Waller, was fought a fierce battle, wherein the victory was not very clear on either side ; saving that the Parliamentarians might seem to have the better, because presently after Sir William Waller followed Sir Ralph Hopton to Devizes, in Wiltshire, though to his cost ; for there he was overthrown, as I have already told you.

After this the King in person marched into the West, and took Exeter, Dorchester, Barnstable, and

divers other places; and had he not at his return besieged Gloucester, and thereby given the Parliament time for new levies, it was thought by many he might have routed the House of Commons. But the end of this year was more favourable to the Parliament. For in January the Scots entered England, and, March the 1st, crossed the Tyne; and whilst the Earl of Newcastle was marching to them, Sir Thomas Fairfax gathered together a considerable party in Yorkshire, and the Earl of Manchester from Lyn advanced towards York; so that the Earl of Newcastle having two armies of the rebels behind him, and another before him, was forced to retreat to York; which those three armies joining presently besieged. And these are all the considerable military actions of the year 1643.

In the same year the Parliament caused to be made a new Great Seal. The Lord Keeper had carried the former seal to Oxford. Hereupon the King sent a messenger to the judges at Westminster, to forbid them to make use of it. This messenger was taken, and condemned at a council of war, and hanged for a spy.

B. Is that the law of war?

A. I know not: but it seems, when a soldier comes into the enemies' quarters without address or notice given to the chief commander, that it is presumed he comes as a spy. The same year, when certain gentlemen at London received a commission of array from the King to levy men for his service in that city, being discovered, they were condemned, and some of them executed. This case is not much unlike the former.

B. Was not the making of a new Great Seal a

PART III. sufficient proof that the war was raised, not to remove evil counsellors from the King, but to remove the King himself from the government? What hope then could there be had in messages and treaties?

A. The entrance of the Scots was a thing unexpected to the King, who was made to believe by continual letters from his commissioner in Scotland, Duke Hamilton, that the Scotch never intended any invasion. The Duke being then at Oxford, the King, assured that the Scotch were now entered, sent him prisoner to Pendennis Castle in Cornwall.

In the beginning of the year 1644, the Earl of Newcastle being, as I told you, besieged by the joint forces of the Scots, the Earl of Manchester and Sir Thomas Fairfax, the King sent Prince Rupert to relieve the town, and as soon as he could to give the enemy battle. Prince Rupert passing through Lancashire, and by the way having stormed that seditious town of Bolton, and taken Stockford and Liverpool, came to York July the 1st, and relieved it; the enemy being risen thence to a place called Marston Moor, about four miles off; and there was fought that unfortunate battle, which lost the King in a manner all the north. Prince Rupert returned by the way he came, and the Earl of Newcastle to York, and thence with some of his officers over the sea to Hamburgh.

The honour of this victory was attributed chiefly to Oliver Cromwell, the Earl of Manchester's lieutenant-general. The Parliamentarians returned from the field to the siege of York, which not long after, upon honourable articles, was surrendered; not that they were favoured, but because the Parliament employed not much time nor many men in sieges.

B. This was a great and sudden abatement of the King's prosperity.

A. It was so; but amends was made him for it within five or six weeks after. For Sir William Waller, after the loss of his army at Roundway-Down, had another raised for him by the city of London; who for the payment thereof imposed a weekly tax of the value of one meal's meat upon every citizen. This army, with that of the Earl of Essex, intended to besiege Oxford; which the King understanding, sent the Queen into the west, and marched himself towards Worcester. This made them to divide again, and the Earl to go into the west, and Waller to pursue the King. By this means, as it fell out, both their armies were defeated. For the King turned upon Waller, routed him at Cropredy-bridge, took his train of artillery and many officers; and then presently followed the Earl of Essex into Cornwall, where he had him at such advantage, that the Earl himself was fain to escape in a small boat to Plymouth; his horse broke through the King's quarters by night, but the infantry were all forced to lay down their arms, and upon condition never more to bear arms against the King were permitted to depart.

In October following was fought a second and sharp battle at Newbury. For this infantry, making no conscience of the conditions made with the King, being now come towards London as far as Basingstoke, had arms put again into their hands; to whom some of the trained-bands being added, the Earl of Essex had suddenly so great an army, that he attempted the King again at Newbury; and certainly had the better of the day, but the night

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parting them, had not a complete victory. And it was observed here, that no part of the Earl's army fought so keenly as they who had laid down their arms in Cornwall.

These were the most important fights in the year 1644, and the King was yet, as both himself and others thought, in as good condition as the Parliament, which despaired of victory by the commanders they then used. Therefore they voted a new modelling of the army, suspecting the Earl of Essex, though I think wrongfully, to be too much a royalist, for not having done so much as they looked for in this second battle at Newbury. The Earls of Essex and Manchester, perceiving what they went about, voluntarily laid down their commissions; and the House of Commons made an ordinance, that no member of either House should enjoy any office or command, military or civil; with which oblique blow they shook off those that had hitherto served them too well. And yet out of this ordinance they excepted Oliver Cromwell, in whose conduct and valour they had very great confidence (which they would not have done, if they had known him as well then as they did afterwards), and made him lieutenant-general to Sir Thomas Fairfax, their new-made general. In the commission to the Earl of Essex, there was a clause for the preservation of his Majesty's person, which in this new commission was left out; though the Parliament as well as the general were as yet Presbyterian.

B. It seems the Presbyterians also in order to their ends would fain have had the King murdered.

A. For my part I doubt it not. For a rightful king living, an usurping power can never be sufficiently secured.

In this same year the Parliament put to death Sir John Hotham and his son, for tampering with the Earl of Newcastle about the rendition of Hull; and Sir Alexander Carew, for endeavouring to deliver up Plymouth, where he was governor for the Parliament; and the Archbishop of Canterbury, for nothing but to please the Scots; for the general article of going about to subvert the fundamental laws of the land, was no accusation, but only foul words. They then also voted down the Book of Common-prayer, and ordered the use of a Directory, which had been newly composed by an Assembly of Presbyterian ministers. They were also then, with much ado, prevailed with for a treaty with the King at Uxbridge; where they remitted nothing of their former demands. The King had also at this time a Parliament at Oxford, consisting of such discontented members as had left the Houses at Westminster; but few of them had changed their old principles, and therefore that Parliament was not much worth. Nay rather, because they endeavoured nothing but messages and treaties, that is to say, defeating of the soldiers' hope of benefit by the war, they were thought by most men to do the King more hurt than good.

The year 1645 was to the King very unfortunate; for by the loss of one great battle, he lost all he had formerly gotten, and at length his life. The new modelled army, after consultation whether they should lay siege to Oxford or march westward to the relief of Taunton, (then besieged by the Lord Goring, and defended by Blake, famous afterwards for his actions at sea), resolved for Taunton; leaving Cromwell to attend the motions of the King,

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though not strong enough to hinder him. The King upon this advantage drew his forces and artillery out of Oxford. This made the Parliament to call back their general, Fairfax, and order him to besiege Oxford. The King in the meantime relieved Chester, which was besieged by Sir William Brereton, and coming back took Leicester by force; a place of great importance, and well provided of artillery and provision.

Upon this success it was generally thought that the King's party was the stronger. The King himself thought so; and the Parliament in a manner confessed the same, by commanding Fairfax to rise from the siege, and endeavour to give the King battle. For the successes of the King, and the divisions and treacheries growing now amongst themselves, had driven them to rely upon the fortune of one day; in which, at Naseby, the King's army was utterly overthrown, and no hope left him to raise another. Therefore after the battle he went up and down, doing the Parliament here and there some shrewd turns, but never much increasing his number.

Fairfax in the meantime first recovered Leicester, and then marching into the west subdued it all, except only a few places, forcing with much ado my Lord Hopton upon honourable conditions to disband his army, and with the Prince of Wales to pass over to Scilly; whence not long after they went to Paris.

In April 1646 General Fairfax began to march back to Oxford. In the meantime Rainsborough, who besieged Woodstock, had it surrendered. The King therefore, who was now also returned to Ox-

ford, from whence Woodstock is but six miles, not doubting but that he should there by Fairfax be besieged, and having no army, to relieve him, resolved to get away disguised to the Scotch army about Newark; and thither he came the 4th of May; and the Scotch army, being upon remove homewards, carried him with them to Newcastle, whither he came May 13th.

B. Why did the King trust himself with the Scots? They were the first that rebelled. They were Presbyterians, that is, cruel; besides, they were indigent, and consequently might be suspected would sell him to his enemies for money. And lastly, they were too weak to defend him, or keep him in their country.

A. What could he have done better? For he had in the winter before sent to the Parliament to get a pass for the Duke of Richmond and others, to bring them propositions of peace; it was denied. He sent again; it was denied again. Then he desired he might come to them in person; this also was denied. He sent again and again to the same purpose; but instead of granting it, they made an ordinance, that the commanders of the militia of London, in case the King should attempt to come within the line of communication, should raise what force they thought fit to suppress tumults, to apprehend such as came with him, and to secure, that is to imprison, his person from danger. If the King had adventured to come, and had been imprisoned, what could the Parliament have done with him? They had dethroned him by their votes, and therefore could have no security whilst he lived, though in prison. It may be they would not have

PART III. put him to death by a high court of justice publicly, but secretly some other way.

B. He should have attempted to get beyond sea.

A. That had been from Oxford very difficult. Besides, it was generally believed that the Scotch army had promised him, that not only his Majesty, but also his friends that should come with him, should be in their army safe; not only for their persons, but also for their honours and consciences. It is a pretty trick, when the army and the particular soldiers of the army are different things, to make the soldiers promise what the army means not to perform.

July the 11th the Parliament sent their propositions to the King at Newcastle; which propositions they pretended to be the only way to a settled and well grounded peace. They were brought by the Earl of Pembroke, the Earl of Suffolk, Sir Walter Earle, Sir John Hippisley, Mr. Goodwin, and Mr. Robinson; whom the King asked if they had power to treat; and when they said no, why they might not as well have been sent by a trumpeter. The propositions were the same dethroning ones which they used to send, and therefore the King would not assent to them. Nor did the Scots swallow them at first, but made some exceptions against them; only, it seems, to make the Parliament perceive they meant not to put the King into their hands gratis. And so at last the bargain was made between them; and upon the payment of 200,000*l.* the King was put into the hands of the commissioners, which the English Parliament sent down to receive him.

B. What a vile complexion has this action, com-

pounded of feigned religion and very covetousness, cowardice, perjury, and treachery!

A. Now the war, that seemed to justify many unseemly things, is ended, you will see almost nothing else in these rebels but baseness and falseness besides their folly.

By this time the Parliament had taken in all the rest of the King's garrisons; whereof the last was Pendennis Castle, whither Duke Hamilton had been sent prisoner by the King.

B. What was done during this time in Ireland and Scotland?

A. In Ireland there had been a peace made by order from his Majesty for a time, which by divisions amongst the Irish was ill kept. The Popish party, the Pope's nuncio being then there, took this to be the time for delivering themselves from their subjection to the English. Besides, the time of the peace was now expired.

B. How were they subject to the English, more than the English to the Irish? They were subject to the King of England; but so also were the English to the King of Ireland.

A. This distinction is somewhat too subtile for common understandings. In Scotland the Marquis of Montrose for the King, with very few men and miraculous victories, had overrun all Scotland, where many of his forces, out of too much security, were permitted to be absent for awhile; of which the enemy having intelligence, suddenly came upon them, and forced them to fly back into the Highlands to recruit; where he began to recover strength, when he was commanded by the King,

PART III. then in the hands of the Scots at Newcastle, to disband; and he departed from Scotland by sea.

In the end of the same year, 1646, the Parliament caused the King's Great Seal to be broken; also the King was brought to Holmeby, and there kept by the Parliament's commissioners. And here was an end of that war as to England and Scotland, but not to Ireland. About this time also died the Earl of Essex, whom the Parliament had discarded.

B. Now that there was peace in England, and the King in prison, in whom was the sovereign power?

A. The right was certainly in the King, but the exercise was yet in nobody; but contended for as in a game at cards, without fighting, all the years 1647 and 1648, between the Parliament and Oliver Cromwell, lieutenant-general to Sir Thomas Fairfax.

You must know, that when King Henry VIII abolished the pope's authority here, and took upon him to be the head of the Church, the bishops, as they could not resist him, so neither were they discontented with it. For whereas before the pope allowed not the bishops to claim jurisdiction in their diocesses *jure divino*, that is of right immediately from God, but by the gift and authority of the pope, now that the pope was ousted, they made no doubt but that the divine right was in themselves. After this, the city of Geneva, and divers other places beyond sea, having revolted from the papacy, set up presbyteries for the government of their several churches. And divers English scholars, that went beyond sea during the persecution in the time of Queen Mary, were much taken with this government, and at their return in the time

of Queen Elizabeth, and ever since, have endeavoured, to the great trouble of the Church and nation, to set up that government here, wherein they might domineer and applaud their own wit and learning. And these took upon them not only a Divine right, but also a Divine inspiration. And having been connived at, and countenanced sometimes in their frequent preaching, they introduced many strange and many pernicious doctrines, out-doing the Reformation, as they pretended, both of Luther and Calvin; receding from the former divinity or church philosophy (for religion is another thing), as much as Luther and Calvin had receded from the pope; and distracted their auditors into a great number of sects, as Brownists, Anabaptists, Independents, Fifth-monarchy-men, Quakers, and divers others, all commonly called by the name of fanatics: insomuch as there was no so dangerous an enemy to the Presbyterians, as this brood of their own hatching.

These were Cromwell's best cards, whereof he had a very great number in the army, and some in the House, whereof he himself was thought one; though he were nothing certain, but, applying himself always to the faction that was strongest, was of a colour like it.

There were in the army a great number, if not the greatest part, that aimed only at rapine and sharing the lands and goods of their enemies; and these also, upon the opinion they had of Cromwell's valour and conduct, thought they could not any way better arrive at their ends than by adhering to him. Lastly, in the Parliament itself, though not the major part, yet a considerable number were

PART III. fanatics enough to put in doubts, and cause delay in the resolutions of the House, and sometimes also by advantage of a thin House to carry a vote in favour of Cromwell, as they did upon the 26th of July. For whereas on the 4th of May precedent the Parliament had voted that the militia of London should be in the hands of a committee of citizens, whereof the Lord Mayor for the time being should be one; shortly after, the Independents, chancing to be the majority, made an ordinance, by which it was put into hands more favourable to the army.

The best cards the Parliament had, were the city of London and the person of the King. The General, Sir Thomas Fairfax, was right Presbyterian, but in the hands of the army, and the army in the hands of Cromwell; but which party should prevail, depended on the playing of the game. Cromwell protested still obedience and fidelity to the Parliament; but meaning nothing less, bethought him and resolved on a way to excuse himself of all that he should do to the contrary upon the army. Therefore he and his son-in-law, Commissary-General Ireton (as good at contriving as himself, and at speaking and writing better), contrive how to mutiny the army against the Parliament. To this end they spread a whisper through the army, that the Parliament, now they had the King, intended to disband them, to cheat them of their arrears, and to send them into Ireland to be destroyed by the Irish. The army being herewith enraged, were taught by Ireton to erect a council amongst themselves of two soldiers out of every troop and every company, to consult for the good of the army, and to assist at the council of war, and to advise for the

peace and safety of the kingdom. These were called adjutators; so that whatsoever Cromwell would have to be done, he needed nothing to make them do it but secretly to put it into the head of these adjutators. The effect of the first consultation was to take the King from Holmeby and to bring him to the army.

The general hereupon, by letter to the Parliament, excuses himself and Cromwell, and the body of the army, as ignorant of the fact; and that the King came away willingly with those soldiers that brought him: assuring them withal, that the whole army intended nothing but peace, nor opposed Presbytery, nor affected Independency, nor did hold any licentious freedom in religion.

B. It is strange that Sir Thomas Fairfax could be so abused by Cromwell as to believe this which he himself here writes.

A. I cannot be ieve that Cornet Joyce could go out of the army with 1,000 soldiers to fetch the King, and neither the general nor the lieutenant-general, nor the body of the army take notice of it. And that the King went willingly, appears to be false by a message sent on purpose from his Majesty to the Parliament.

B. Here is perfidy upon perfidy: first, the perfidy of the Parliament against the King, and then the perfidy of the army against the Parliament.

A. This was the first trick Cromwell played, whereby he thought himself to have gotten so great an advantage that he said openly, "That he had the Parliament in his pocket," as indeed he had, and the city too. For upon the news of it they were, both one and the other, in very great dis-

PART III. order, and the more, because there came with it a rumour that the army was marching up to London.

The King in the meantime, till his residence was settled at Hampton Court, was carried from place to place, not without some ostentation; but with much more liberty, and with more respect shewn him by far, than when he was in the hands of the Parliament's commissioners; for his own chaplains were allowed him, and his children and some friends permitted to see him. Besides that, he was much complimented by Cromwell, who promised him, in a serious and seeming passionate manner, to restore him to his right against the Parliament.

B. How was he sure he could do that?

A. He was not sure; but he was resolved to march up to the city and Parliament, to set up the King again, and be the second man, unless in the attempt he found better hope, than yet he had, to make himself the first man by dispossessing the King.

B. What assistance against the Parliament and the city could Cromwell expect from the King?

A. By declaring directly for him he might have had all the King's party, which were many more now since his misfortune than ever they were before. For in the Parliament itself, there were many that had discovered the hypocrisy and private aims of their fellows: many were converted to their duty by their own natural reason; and their compassion for the King's sufferings had begot generally an indignation against the Parliament: so that if they had been by the protection of the present army brought together and embodied, Cromwell might have done what he had pleased, in the first

place for the King, and in the second for himself. But it seems he meant first to try what he could do without the King; and if that proved enough, to rid his hands of him.

B. What did the Parliament and city do to oppose the army?

A. First, the Parliament sent to the general to redeliver the King to their commissioners. Instead of an answer to this, the army sent articles to the Parliament, and with them a charge against eleven of their members, all of them active Presbyterians: of which articles these are some: 1. That the House may be purged of those, who, by the self-denying ordinance, ought not to be there; 2. That such as abused and endangered the kingdom, might be disabled to do the like hereafter; 3. That a day might be appointed to determine this Parliament; 4. That they would make an account to the kingdom of the vast sums of money they had received; 5. That the eleven members might presently be suspended sitting in the House. These were the articles that put them to their trumps; and they answered none of them, but that of the suspension of the eleven members, which they said they could not do by law till the particulars of the charge were produced: but this was soon answered with their own proceeding against the Archbishop of Canterbury and the Earl of Strafford.

The Parliament being thus somewhat awed, and the King made somewhat confident, he undertakes the city, requiring the Parliament to put the militia of London into other hands.

B. What other hands? I do not well understand you.

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A. I told you that the militia of London was, on the 4th of May, put into the hands of the lord-mayor and other citizens, and soon after put into the hands of other men more favourable to the army. And now I am to tell you, that on July the 26th, the violence of certain apprentices and disbanded soldiers forced the Parliament to re-settle it as it was, in the citizens; and hereupon the two speakers and divers of the members ran away to the army, where they were invited and contented to sit and vote in the council of war in nature of a Parliament. And out of the citizens' hands they would have the militia taken away, and put again into those hands out of which it was taken the 26th of July.

B. What said the city to this?

A. The Londoners manned their works, viz: the line of communication; raised an army of valiant men within the line; chose good officers, all being desirous to go out and fight whensoever the city should give them order; and in that posture stood expecting the enemy.

The soldiers in the meantime enter into an engagement to live and die with Sir Thomas Fairfax, and the Parliament, and the army.

B. That is very fine. They imitate that which the Parliament did, when they first took up arms against the King, styling themselves the King and Parliament, maintaining that the King was always virtually in his Parliament: so the army now, making war against the Parliament, called themselves the Parliament and the army: but they might, with more reason, say, that the Parliament, since it was in Cromwell's pocket, was virtually in the army.

A. Withal they send out a declaration of the grounds of their march towards London; wherein they take upon them to be judges of the Parliament, and of who are fit to be trusted with the business of the kingdom, giving them the name, not of the Parliament, but of the gentlemen at Westminster. For since the violence they were under July the 26th, the army denied them to be a lawful Parliament. At the same time they sent a letter to the mayor and aldermen of London, reproaching them with those late tumults; telling them they were enemies to the peace, treacherous to the Parliament, unable to defend either the Parliament or themselves; and demanded to have the city delivered into their hands, to which purpose, they said, they were now coming to them. The general also sent out his warrants to the counties adjacent, summoning their trained soldiers to join with them.

B. Were the trained soldiers part of the general's army?

A. No, nor at all in pay, nor could be without an order of Parliament. But what might an army not do, after it had mastered all the laws of the land? The army being come to Hounslow Heath, distant from London but ten miles, the Court of Aldermen was called to consider what to do. The captains and soldiers of the city were willing, and well provided, to go forth and give them battle. But a treacherous officer, that had charge of a work on Southwark side, had let in within the line a small party of the enemies, who marched as far as to the gate of London-bridge; and then the Court of Aldermen, their hearts failing them, submitted on

PART III. these conditions: to relinquish their militia; to desert the eleven members; to deliver up the forts and line of communication, together with the Tower of London, and all magazines and arms therein, to the army; to disband their forces and turn out all the reformadoes, that is, all Essex's old soldiers; to draw off the guards from the Parliament. All which was done, and the army marched triumphantly through the principal streets of the city.

B. It is strange that the mayor and aldermen, having such an army, should so quickly yield. Might they not have resisted the party of the enemy at the bridge, with a party of their own; and the rest of the enemies, with the rest of their own?

A. I cannot judge of that: but to me it would have been strange if they had done otherwise. For I consider the most part of rich subjects, that have made themselves so by craft and trade, as men that never look upon anything but their present profit; and who, to every thing not lying in that way, are in a manner blind, being amazed at the very thought of plundering. If they had understood what virtue there is to preserve their wealth in obedience to their lawful sovereign, they would never have sided with the Parliament; and so we had had no need of arming. The mayor and aldermen therefore, being assured by this submission to save their goods, and not sure of the same by resisting, seem to me to have taken the wisest course. Nor was the Parliament less tame than the city. For presently, August the 6th, the general brought the fugitive speakers and members to the House with a strong guard of soldiers, and replaced the speakers in their chairs. And for this they gave the general thanks, not only

there in the House, but appointed also a day for a holy thanksgiving; and not long after made him Generalissimo of all the forces of England and Constable of the Tower. But in effect all this was the advancement of Cromwell; for he was the usufructuary, though the property were in Sir Thomas Fairfax. For the Independents immediately cast down the whole line of communication; divided the militia of London, Westminster and Southwark, which were before united; displaced such governors of towns and forts as were not for their turn, though placed there by ordinance of Parliament; instead of whom, they put in men of their own party. They also made the Parliament to declare null all that had passed in the Houses from July the 26th to August the 6th, and clapped in prison some of the lords, and some of the most eminent citizens, whereof the lord mayor was one.

B. Cromwell had power enough now to restore the King. Why did he not?

A. His main end was to set himself in his place. The restoring of the King was but a reserve against the Parliament, which being in his pocket, he had no more need of the King, who was now an impediment to him. To keep him in the army was a trouble; to let him fall into the hands of the Presbyterians had been a stop to his hopes; to murder him privately, besides the horror of the act, now whilst he was no more than lieutenant-general, would have made him odious without furthering his design. There was nothing better for his purpose than to let him escape from Hampton Court, where he was too near the Parliament, whither he pleased beyond the sea. For though Cromwell had a great

PART III. party in the Parliament House whilst they saw not his ambition to be their master, yet they would have been his enemies as soon as that had appeared. To make the King attempt an escape, some of those that had him in custody, by Cromwell's direction told him that the adjutators meant to murder him; and withal caused a rumour of the same to be generally spread, to the end it might that way also come to the King's ear, as it did.

The King, therefore, in a dark and rainy night, his guards being retired, as it was thought, on purpose, left Hampton Court and went to the sea-side about Southampton, where a vessel had been bespoken to transport him but failed; so that the King was forced to trust himself with Colonel Hammond, then governor of the Isle of Wight; expecting perhaps some kindness from him, for Dr. Hammond's sake, brother to the colonel and his Majesty's much favoured chaplain. But it proved otherwise; for the colonel sent to his masters of the Parliament, to receive their orders concerning him. This going into the Isle of Wight was not likely to be any part of Cromwell's design, who neither knew whither nor which way he would go; nor had Hammond known any more than other men, if the ship had come to the appointed place in due time.

B. If the King had escaped into France, might not the French have assisted him with forces to recover his kingdom, and so frustrated the designs both of Cromwell and all the King's other enemies?

A. Yes, much; just as they assisted his son, our present most gracious Sovereign, who two years before fled thither out of Cornwall.

B. It is methinks no great polity in neighbouring

princes to favour, so often as they do, one another's rebels, especially when they rebel against monarchy itself. They should rather, first, make a league against rebellion, and afterwards, if there be no remedy, fight one against another. Nor will that serve the turn amongst Christian sovereigns, till preaching be better looked to, whereby the interpretation of a verse in the Hebrew, Greek, or Latin Bible, is oftentimes the cause of civil war and the deposing and assassinating of God's anointed. And yet, converse with those divinity-disputers as long as you will, you will hardly find one in a hundred discreet enough to be employed in any great affair either of war or peace. It is not the right of the sovereign, though granted to him by every man's express consent, that can enable him to do his office; it is the obedience of the subject, that must do that. For what good is it to promise allegiance, and then by and by to cry out, as some ministers did in the pulpit, *To your tents, O Israel!*? Common people know nothing of right or wrong by their own meditation; they must therefore be taught the grounds of their duty, and the reasons why calamities ever follow disobedience to their lawful sovereigns. But to the contrary, our rebels were publicly taught rebellion in the pulpits; and that there was no sin, but the doing of what the preachers forbade, or the omission of what they advised. But now the King was the Parliament's prisoner, why did not the Presbyterians advance their own interest by restoring him?

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A. The Parliament, in which there were more Presbyterians yet than Independents, might have gotten what they would of the King during his life,

PART III. if they had not by an unconscionable and sottish ambition obstructed the way to their ends. They sent him four propositions, to be signed and passed by him as Acts of Parliament; telling him, when these were granted, they would send commissioners to treat with him of any other articles.

The propositions were these: First, that the Parliament should have the militia, and the power of levying money to maintain it, for twenty years; and after that term, the exercise thereof to return to the King, in case the Parliament think the safety of the kingdom concerned in it.

B. The first article takes from the King the militia, and consequently the whole sovereignty for ever.

A. The second was, that the King should justify the proceedings of the Parliament against himself; and declare void all oaths and declarations made by him against the Parliament.

B. This was to make him guilty of the war, and of all the blood spilt therein.

A. The third was, to take away all titles of honour conferred by the King since the Great Seal was carried to him in May 1642.

The fourth was, that the Parliament should adjourn themselves, when, and to what place, and for what time they pleased.

These propositions the King refused to grant, as he had reason; but sent others of his own, not much less advantageous to the Parliament, and desired a personal treaty with the Parliament for the settling of the peace of the kingdom. But the Parliament denying them to be sufficient for that purpose, voted that there should be no more addresses made

to him, nor messages received from him; but that they would settle the kingdom without him. And this they voted partly upon the speeches and menaces of the army-faction then present in the House of Commons, whereof one advised these three points: 1. To secure the King in some inland castle with guards; 2. To draw up articles of impeachment against him; 3. To lay him by, and settle the kingdom without him.

Another said, that his denying of the four bills was the denying protection to his subjects; and that therefore they might deny him subjection; and added, that till the Parliament forsook the army, the army would never forsake the Parliament. This was threatening.

Last of all, Cromwell himself told them, it was now expected that the Parliament should govern and defend the kingdom, and not any longer let the people expect their safety from a man whose heart God had hardened; nor let those, that had so well defended the Parliament, be left hereafter to the rage of an irreconcilable enemy, lest they seek their safety some other way. This again was threatening; as also the laying his hand upon his sword when he spake it.

And hereupon the vote of non-addresses was made an ordinance; which the House would afterwards have recalled, but was forced by Cromwell to keep their word.

The Scotch were displeased with it; partly, because their brethren the Presbyterians had lost a great deal of their power in England; and partly also, because they had sold the King into their hands.

The King now published a passionate complaint

PART III. to his people of this hard dealing with him; which made them pity him, but not yet rise in his behalf.

B. Was not this, think you, the true time for Cromwell to take possession?

A. By no means. There were yet many obstacles to be removed. He was not general of the army. The army was still for a Parliament. The city of London discontented about their militia. The Scots expected with an army to rescue the King. His adjutators were levellers, and against monarchy, who though they had helped him to bring under the Parliament, yet, like dogs that are easily taught to fetch, and not easily taught to render, would not make him king. So that Cromwell had these businesses following to overcome, before he could formally make himself a sovereign prince: 1. To be Generalissimo: 2. To remove the King: 3. To suppress all insurrections here: 4. To oppose the Scots: and lastly, to dissolve the present Parliament. Mighty businesses, which he could never promise himself to overcome. Therefore I cannot believe he then thought to be King; but only by well serving the strongest party, which was always his main polity, to proceed as far as that and fortune would carry him.

B. The Parliament were certainly no less foolish than wicked, in deserting thus the King, before they had the army at a better command than they had.

A. In the beginning of 1648 the Parliament gave commission to Philip Earl of Pembroke, then made Chancellor of Oxford, together with some of the doctors there as good divines as he, to purge the

University. By virtue whereof they turned out all such as were not of their faction, and all such as had approved the use of the Common-prayer-book; as also divers scandalous ministers and scholars, that is, such as customarily and without need took the name of God into their mouths, or used to speak wantonly, or use the company of lewd women: and for this last I cannot but commend them. PART III.

B. So shall not I; for it is just such another piece of piety, as to turn men out of an hospital because they are lame. Where can a man probably learn godliness, and how to correct his vices, better than in the universities erected for that purpose?

A. It may be, the Parliament thought otherwise. For I have often heard the complaints of parents, that their children were debauched there to drunkenness, wantonness, gaming, and other vices consequent to these. Nor is it a wonder amongst so many youths, if they did corrupt one another in despite of their tutors, who oftentimes were little elder than themselves. And therefore I think the Parliament did not much reverence that institution of universities, as to the bringing up of young men to virtue; though many of them learned there to preach, and became thereby capable of preferment and maintenance; and some others were sent thither by their parents, to save themselves the trouble of governing them at home, during that time wherein children are least governable. Nor do I think the Parliament cared more for the clergy than other men did. But certainly an university is an excellent servant to the clergy; and the clergy, if it be not carefully looked to, by their dissensions in doc-

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trines and by the advantage to publish their dissensions, is an excellent means to divide a kingdom into factions.

B. But seeing there is no place in this part of the world, where philosophy and other human sciences are not highly valued; where can they be learned better than in the Universities?

A. What other sciences? Do not divines comprehend all civil and moral philosophy within their divinity? And as for natural philosophy, is it not removed from Oxford and Cambridge to Gresham College in London, and to be learned out of their gazettes? But we are gone from our subject.

B. No; we are indeed gone from the greater businesses of the kingdom; to which, if you please, let us return.

A. The first insurrection, or rather tumult, was that of the apprentices, on the 9th of April. But this was not upon the King's account, but arose from a customary assembly of them for recreation in Moorfields, whence some zealous officers of the trained soldiers would needs drive them away by force; but were themselves routed with stones; and had their ensign taken away by the apprentices, which they carried about in the streets, and frighted the lord mayor into his house; where they took a gun called a drake; and then they set guards at some of the gates, and all the rest of the day childishly swaggered up and down: but the next day the general himself marching into the city, quickly dispersed them. This was but a small business, but enough to let them see that the Parliament was ill-beloved of the people.

Next, the Welch took arms against them. There were three colonels in Wales, Langhorne, Poyer, and Powel, who had formerly done the Parliament good service, but now were commanded to disband; which they refused to do; and the better to strengthen themselves, declared for the King; and were about 8,000.

About the same time, in Wales also, was another insurrection, headed by Sir Nicholas Keymish, and another under Sir John Owen; so that now all Wales was in rebellion against the Parliament: and yet all these were overcome in a month's time by Cromwell and his officers; but not without store of bloodshed on both sides.

B. I do not much pity the loss of those men, that impute to the King that which they do upon their own quarrel.

A. Presently after this, some of the people of Surrey sent a petition to the Parliament for a personal treaty between the King and Parliament; but their messengers were beaten home again by the soldiers that were quartered about Westminster and the mews. And then the Kentish men having a like petition to deliver, and seeing how ill it was like to be received, threw it away and took up arms. They had many gallant officers, and for general the Earl of Norwich; and increased daily by apprentices and old disbanded soldiers. Insomuch as the Parliament was glad to restore to the city their militia, and to keep guards on the Thames side: and then Fairfax marched towards the enemy.

B. And then the Londoners, I think, might easily and suddenly have mastered, first the Parliament,

PART III. and next Fairfax his 8,000, and lastly Cromwell's army; or at least have given the Scotch army opportunity to march unfoughten to London.

A. It is true: but the city was never good at venturing; nor were they or the Scots principled to have a King over them, but under them. Fairfax marching with his 8,000 against the royalists, routed a part of them at Maidstone; another part were taking in other places in Kent further off; and the Earl of Norwich with the rest came to Blackheath, and thence sent to the city to get passage through it, to join with those which were risen in Essex under Sir Charles Lucas and Sir George Lisle; which being denied, the greatest part of his Kentish men deserted him. With the rest, not above 500, he crossed the Thames into the Isle of Dogs, and so to Bow, and thence to Colchester. Fairfax having notice of this, crossed the Thames at Gravesend; and overtaking them, besieged them in Colchester. The town had no defence but a breastwork, and yet held out, upon hope of the Scotch army to relieve them, the space of two months. Upon the news of the defeat of the Scots they were forced to yield. The Earl of Norwich was sent prisoner to London. Sir Charles Lucas and Sir George Lisle, two loyal and gallant persons, were shot to death. There was also another little insurrection, headed by the Earl of Holland, about Kingston; but quickly suppressed, and he himself taken prisoner.

B. How came the Scots to be so soon dispatched?

A. Merely, as it is said, for want of conduct.

Their army was led by Duke Hamilton, who was then set at liberty, when Pendennis Castle, where he was prisoner, was taken by the Parliamentarians. He entered England with horse and foot 15,000, to which came above 3,000 English royalists. Against these Cromwell marched out of Wales with horse and foot 11,000, and near to Preston in Lancashire, in less than two hours, defeated them. And the cause of it is said to be, that the Scotch army was so ordered as they could not all come to the fight, nor relieve their fellows. After the defeat, they had no way to fly but further into England; so that in the pursuit they were almost all taken, and lost all that an army can lose; for the few that got home, did not all bring home their swords. Duke Hamilton was taken, and not long after sent to London. But Cromwell marched on to Edinburgh, and there, by the help of the faction which was contrary to Hamilton's, he made sure not to be hindered in his designs; the first whereof was to take away the King's life by the hand of the Parliament.

Whilst these things passed in the north, the Parliament, Cromwell being away, came to itself, and recalling their vote of non-addresses, sent to the King new propositions, somewhat, but not much, easier than formerly. And upon the King's answer to them, they sent commissioners to treat with him at Newport in the Isle of Wight; where they so long dodged with him about trifles, that Cromwell was come to London before they had done, to the King's destruction. For the army was now wholly at the devotion of Cromwell, who set the adjutators on work again to make a remonstrance to the House

PART III. of Commons, wherein they require: 1. That the King be brought to justice: 2. That the Prince and the Duke of York be summoned to appear at a day appointed, and proceeded with, according as they should give satisfaction: 3. That the Parliament settle the peace and future government, and set a reasonable period to their own sitting, and make certain future Parliaments annual or biennial 4. That a competent number of the King's chief instruments be executed. And this to be done both by the House of Commons and by a general agreement of the people testified by their subscriptions Nor did they stay for an answer, but presently set a guard of soldiers at the Parliament-house door and other soldiers in Westminster Hall, suffering none to go into the House but such as would serve their turns. All others were frighted away, or made prisoners, and some upon divers quarrels suspended: above ninety of them, because they had refused to vote against the Scots; and others, because they had voted against the vote of non-addresses: and the rest were a House for Cromwell. The fanatics also in the city being countenanced by the army, pack a new common-council, whereof any forty was to be above the mayor; and their first work was to frame a petition for justice against the King, which Tichborne, the mayor, involving the city in the regicide, delivered to the Parliament.

At the same time, with the like violence, they took the King from Newport in the Isle of Wight, to Hurst Castle, till things were ready for his trial. The Parliament in the meantime, to avoid perjury, by an ordinance declared void the oaths of supre-

macy and allegiance, and presently after made another to bring the King to his trial.

B. This is a piece of law that I understood not before, that when many swear singly, they may, when they are assembled, if they please, absolve themselves.

A. The ordinance being drawn up was brought into the House, where after three several readings it was voted, "that the Lords and Commons of England, assembled in Parliament, do declare, that by the fundamental laws of the realm, it is treason in the King of England to levy war against the Parliament." And this vote was sent up to the Lords; and they denying their consent, the Commons in anger made another vote; "That all members of committees should proceed and act in any ordinance, whether the Lords concurred or no; and that the people, under God, are the original of all just power; and that the House of Commons have the supreme power of the nation; and that whatsoever the House of Commons enacteth, is law." All this passed *nemine contradicente.*

B. These propositions fight not only against the King of England, but against all the kings of the world. It were good they thought on it. But yet, I believe, under God the original of all laws was in the people.

A. But the people, for them and their heirs, by consent and oaths, have long ago put the supreme power of the nation into the hands of their kings, for them and their heirs; and consequently into the hands of this King, their known and lawful heir.

B. But does not the Parliament represent the people?

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A. Yes, to some purposes; as to put up petitions to the King, when they have leave, and are grieved; but not to make a grievance of the King's power. Besides, the Parliament never represents the people but when the King calls them; nor is it to be imagined that he calls a Parliament to depose himself. Put the case, every county and borough should have given this Parliament for a benevolence a sum of money; and that every county, meeting in their county-court or elsewhere, and every borough in their town-hall, should have chosen men to carry their several sums respectively to the Parliament. Had not these men represented the whole nation?

B. Yes, no doubt.

A. Do you think the Parliament would have thought it reasonable to be called to account by this representative?

B. No, sure; and yet I must confess the case is the same.

A. This ordinance contained, first, a summary of the charge against the King, in substance this; that not content with the encroachments of his predecessors upon the freedom of the people, he had designed to set up a tyrannical government; and to that end, had raised and maintained in the land a civil war against the Parliament, whereby the country hath been miserably wasted, the public treasure exhausted, thousands of people murdered, and infinite other mischiefs committed. Secondly, a constitution passed of a high court of justice, that is, of a certain number of commissioners, of whom any twenty had power to try the King, and

to proceed to sentence according to the merit of the cause, and see it speedily executed. PART III.

The commissioners met on Saturday, January 20th, in Westminster Hall, and the King was brought before them; where, sitting in a chair, he heard the charge read, but denied to plead to it either guilty or not guilty, till he should know by what lawful authority he was brought thither. The president told him that the Parliament affirmed their own authority; and the King still persevered in his refusal to plead. Though many words passed between him and the president, yet this was the substance of it all.

On Monday January 22nd the court met again, and the solicitor moved that if the King persisted in denying the authority of the court, the charge might be taken *pro confesso*: but the King still denied their authority.

They met again January the 23rd, and then the solicitor moved the court for judgment; whereupon the King was required to give his final answer; which was again a denial of their authority.

Lastly, they met again January the 27th, where the King desired to be heard before the Lords and Commons in the Painted Chamber, and promising after that to abide the judgment of the court. The commissioners retired for half an hour to consider of it, and then returning caused the King to be brought again to the bar, and told him that what he proposed was but another denial of the court's jurisdiction; and that if he had no more to say, they would proceed. Then the King answering that he had no more to say, the president began a long speech in justification of the Parliament's pro-

PART III. ceedings, producing the examples of many kings killed or deposed by wicked Parliaments, ancient and modern, in England, Scotland, and other parts of the world. All which he endeavoured to justify from this only principle; that the people have the supreme power, and the Parliament is the people. This speech ended, the sentence of death was read; and the same upon Tuesday after, January 30th, executed at the gate of his own palace of Whitehall. He that can delight in reading how villainously he was used by the soldiers between the sentence and execution, may go to the chronicle itself; in which he shall see what courage, patience, wisdom, and goodness was in this prince, whom in their charge the members of that wicked Parliament styled tyrant, traitor, and murderer.

The King being dead, the same day they made an act of Parliament, that whereas several pretences might be made to the crown, &c. it is enacted by this present Parliament and by authority of the same, that no person presume to declare, proclaim, or publish, or any way promote Charles Stuart, son of Charles late King of England, commonly called Prince of Wales, or any other person, to be King of England or Ireland, &c.

B. Seeing the King was dead, and his successor barred; by what declared authority was the peace maintained?

A. They had, in their anger against the Lords, formerly declared the supreme power of the nation to be in the House of Commons; and now, on February the 5th, they vote the House of Lords to be useless and dangerous. And thus the kingdom is turned

into a democracy, or rather an oligarchy: for presently they made an act, that none of those members, who were secluded for opposing the vote of non-addresses, should ever be re-admitted. And these were commonly called the secluded members; and the rest were by some styled a Parliament, and by others the Rump.

I think you need not now have a catalogue, either of the vices, or of the crimes, or of the follies of the greatest part of them that composed the Long Parliament; than which greater cannot be in the world. What greater vices than irreligion, hypocrisy, avarice and cruelty; which have appeared so eminently in the actions of Presbyterian members, and Presbyterian ministers? What greater crimes than blaspheming and killing God's anointed; which was done by the hands of the Independents; but by the folly and first treason of the Presbyterians who betrayed and sold him to his murderers? Nor was it a little folly in the Lords, not to see that by the taking away of the King's power they lost withal their own privileges; or to think themselves, either for number or judgment, any way a considerable assistance to the House of Commons. And for those men who had skill in the laws, it was no great sign of understanding not to perceive that the laws of the land were made by the King, to oblige his subjects to peace and justice, and not to oblige himself that made them. And lastly and generally, all men are fools which pull down anything which does them good, before they have set up something better in its place. He that would set up democracy with an army, should have an army to maintain it; but

PART III. these men did it, when those men had the army that were resolved to pull it down. To these follies I might add the folly of those fine men, which out of their reading of Tully, Seneca, or other anti-monarchics, think themselves sufficient politicians, and show their discontents when they are not called to the management of the state, and turn from one side to another upon every neglect they fancy from the King or his enemies.

PART IV.

A. You have seen the Rump in possession, as they believed, of the supreme power over the two nations of England and Ireland, and the army their servant; though Cromwell thought otherwise, serving them diligently for the advancement of his own purposes. I am now therefore to show you their proceedings.

B. Tell me first, how this kind of government under the Rump or relic of a House of Commons is to be called?

A. It is doubtless an oligarchy. For the supreme authority must needs be in one man or in more. If in one, it is monarchy; the Rump therefore was no monarchy. If the authority were in more than one, it was in all, or in fewer than all. When in all, it is democracy; for every man may enter into the assembly which makes the Sovereign Court; which they could not do here. It is therefore manifest, that the authority was in a few, and consequently the state was an oligarchy.

B. Is it not impossible for a people to be well governed, that are to obey more masters than one?

A. Both the Rump and all other sovereign assemblies, if they have but one voice, though they be many men, yet are they but one person. For contrary commands cannot consist in one and the same voice, which is the voice of the greatest part; and therefore they might govern well enough, if they had honesty and wit enough.

PART IV. The first act of the Rump was the exclusion of those members of the House of Commons, which had been formerly kept out by violence for the procuring of an ordinance for the King's trial; for these men had appeared against the ordinance of non-addresses, and therefore were excluded, because they might else be an impediment to their future designs.

B. Was it not rather, because in the authority of few they thought the fewer the better, both in respect of their shares and also of a nearer approach in every one of them to the dignity of king?

A. Yes certainly, that was their principal end.

B. When these were put out, why did not the counties and boroughs choose others in their places?

A. They could not do that without order from the House.

After this they constituted a council of forty persons, which they termed a Council of State, whose office was to execute what the Rump should command.

B. When there was neither King nor House of Lords, they could not call themselves a Parliament; for a Parliament is a meeting of the King, Lords, and Commons, to confer together about the businesses of the commonwealth. With whom did the Rump confer?

A. Men may give to their assembly what name they please, what signification soever such name might formerly have had; and the Rump took the name of Parliament, as most suitable to their purpose, and such a name, as being venerable amongst the people for many hundred years, had countenanced and sweetened subsidies and other levies of money, otherwise very unpleasant to the subject.

They took also afterwards another name, which was *Custodes Libertatis Angliæ*, which title they used only in their writs issuing out of the courts of justice.

B. I do not see how a subject that is tied to the laws, can have more liberty in one form of government than another.

A. Howsoever to the people, that understand by liberty nothing but leave to do what they list, it was a title not ingrateful.

Their next work was to set forth a public declaration, that they were fully resolved to maintain the fundamental laws of the nation, as to the preservation of the lives, liberties, and proprieties of the people.

B. What did they mean by the fundamental laws of the nation?

A. Nothing but to abuse the people. For the only fundamental law in every commonwealth, is to obey the laws from time to time, which he shall make to whom the people have given the supreme power. How likely then are they to uphold the fundamental laws, that had murdered him who was by themselves so often acknowledged for their lawful sovereign? Besides, at the same time that this declaration came forth, they were erecting that High Court of Justice which took away the lives of Duke Hamilton, the Earl of Holland, and the Lord Capel. Whatsoever they meant by a fundamental law, the erecting of this court was a breach of it, as being warranted by no former law or example in England.

At the same time also they levied taxes by soldiers, and to soldiers permitted free quarter, and

PART IV. did many other actions, which if the King had done, they would have said had been done against the liberty and propriety of the subject.

B. What silly things are the common sort of people, to be cozened as they were so grossly!

A. What sort of people, as to this matter, are not of the common sort? The craftiest knaves of all the Rump were no wiser than the rest whom they cozened. For the most of them did believe that the same things which they imposed upon the generality, were just and reasonable; and especially the great haranguers, and such as pretended to learning. For who can be a good subject in a monarchy, whose principles are taken from the enemies of monarchy, such as were Cicero, Seneca, Cato, and other politicians of Rome, and Aristotle of Athens, who seldom spake of kings but as of wolves and other ravenous beasts? You may perhaps think a man has need of nothing else to know the duty he owes to his governor, and what right he has to order him, but a good natural wit; but it is otherwise. For it is a science, and built upon sure and clear principles, and to be learned by deep and careful study, or from masters that have deeply studied it. And who was there in the Parliament or in the nation, that could find out those evident principles, and derive from them the necessary rules of justice, and the necessary connexion of justice and peace? The people have one day in seven the leisure to hear instruction, and there are ministers appointed to teach them their duty. But how have those ministers performed their office? A great part of them, namely, the Presbyterian ministers, throughout the whole war, instigated the people

against the King; so did also Independents and other fanatic ministers. The rest, contented with their livings, preached in their parishes points of controversy, to religion impertinent, but to the breach of charity among themselves very effectual; or else eloquent things, which the people either understood not, or thought themselves not concerned in. But this sort of preachers, as they did little good, so they did little hurt. The mischief proceeded wholly from the Presbyterian preachers, who, by a long practised histrionic faculty, preached up the rebellion powerfully.

B. To what end?

A. To the end that the State becoming popular, the Church might be so too, and governed by an Assembly; and by consequence, as they thought, seeing politics are subservient to religion, they might govern, and thereby satisfy not only their covetous humour with riches, but also their malice with power to undo all men that admired not their wisdom. Your calling the people silly things, obliged me by this digression to show you, that it is not want of wit, but want of the science of justice, that brought them into these troubles. Persuade, if you can, that man that has made his fortune, or made it greater, or an eloquent orator, or a ravishing poet, or a subtle lawyer, or but a good hunter or a cunning gamester, that he has not a good wit; and yet there were of all these a great many so silly, as to be deceived by the Rump and members of the same Rump. They wanted not wit, but the knowledge of the causes and grounds upon which one person has a right to govern, and the rest an obligation to obey; which grounds are necessary to be

PART IV. taught the people, who without them cannot live long in peace amongst themselves.

B. Let us return, if you please, to the proceedings of the Rump.

A. In the rest of this year they voted a new stamp for the coin of this nation. They considered also of agents to be sent to foreign states; and having lately received applause from the army for their work done by the High Court of Justice, and encouragement to extend the same further, they perfected the said High Court of Justice, in which were tried Duke Hamilton, the Earl of Holland, Lord Capel, the Earl of Norwich, and Sir John Owen; whereof, as I mentioned before, the three first were beheaded. This affrighted divers of the King's party out of the land; for not only they, but all that had borne arms for the King, were at that time in very great danger of their lives. For it was put to the question by the army at a council of war, whether they should be all massacred or no; where the noes carried it but by two voices. Lastly, March the 24th, they put the Mayor of London out of his office, fined him 2,000*l.*, disfranchised him, and condemned him to two months imprisonment in the Tower, for refusing to proclaim the act for abolishing the kingly power. And thus ended the year 1648 and the monthly fast; God having granted that which they fasted for, the death of the King and the possession of his inheritance. By these their proceedings they had already lost the hearts of the generality of the people, and had nothing to trust to but the army; which was not in their power, but in Cromwell's; who never failed, when there was occasion, to put them upon all exploits that might

make them odious to the people, in order to his future dissolving them whensoever it should conduce to his ends.

In the beginning of 1649 the Scots, discontented with the proceedings of the Rump against the late King, began to levy soldiers in order to a new invasion of England. The Irish rebels, for want of timely resistance from England, were grown terrible; and the English army at home, infected by the adjutators, were casting how to share the land amongst the godly, meaning themselves and such others as they pleased, who were therefore called Levellers. Also the Rump for the present were not very well provided of money, and, therefore, the first thing they did, was the laying of a tax upon the people of 90,000*l.* a month for the maintenance of the army.

B. Was it not one of their quarrels with the King, that he had levied money without the consent of the people in Parliament?

A. You may see by this, what reason the Rump had to call itself a Parliament. For the taxes imposed by Parliament were always understood to be by the people's consent, and consequently legal. To appease the Scots, they sent messengers with flattering letters to keep them from engaging for the present King: but in vain: for they would hear nothing from a House of Commons, as they called it, at Westminster, without a King and Lords. But they sent commissioners to the King, to let him know what they were doing for him: for they were resolved to raise an army of 17,000 foot and 6,000 horse for themselves.

To relieve Ireland, the Rump had resolved to send

PART IV. eleven regiments thither out of the army in England. This happened well for Cromwell. For the levelling soldiers, which were in every regiment many, and in some the major part, finding that instead of dividing the land at home they were to venture their lives in Ireland, flatly denied to go; and one regiment, having cashiered their colonel about Salisbury, was marching to join with three regiments more of the same resolution; but both the general and Cromwell falling upon them at Burford, utterly defeated them, and soon after reduced the whole army to their obedience. And thus another of the impediments to Cromwell's advancement was soon removed. This done, they came to Oxford, and thence to London: and at Oxford, both the general and Cromwell were made doctors of the civil law; and at London, feasted and presented by the city.

B. Were they not first made masters, and then doctors?

A. They had made themselves already masters, both of the laws and Parliament. The army being now obedient, the Rump sent over those eleven regiments into Ireland, under the command of Dr. Cromwell, intituled governor of that kingdom, the Lord Fairfax being still general of all the forces, both here and there.

The Marquis, now Duke, of Ormond was the King's lieutenant of Ireland; and the rebels had made a confederacy amongst themselves; and these confederates had made a kind of league with the lieutenant, wherein they agreed, upon liberty given them in the exercise of their religion, to be faithful to and assist the King. To these also were joined

some forces raised by the Earls of Castlehaven and Clanricarde and my Lord Inchiquin; so that they were the greatest united strength in the island. But there were amongst them a great many other Papists, that would by no means subject themselves to Protestants; and these were called the Nuntio's party, as the others were called the confederate party. These parties not agreeing, and the confederate party having broken their articles, the lord-lieutenant seeing them ready to besiege him in Dublin, and not able to defend it, did, to preserve the place for the Protestants, surrender it to the Parliament of England; and came over to the King at that time when he was carried from place to place by the army. From England he went over to the Prince, now King, residing then at Paris.

But the confederates, affrighted with the news that the Rump was sending over an army thither, desired the Prince by letters, to send back my Lord of Ormond, engaging themselves to submit absolutely to the King's authority, and to obey my Lord of Ormond as his lieutenant. And hereupon he was sent back. This was about a year before the going over of Cromwell.

In which time, by the dissensions in Ireland between the confederate party and the Nuntio's party, and discontents about command, this otherwise sufficient power effected nothing; and was at last defeated, August the 2nd, by a sally out of Dublin, which they were besieging. Within a few days after arrived Cromwell, who with extraordinary diligence and horrid executions, in less than a twelvemonth that he stayed there, subdued in a

PART IV. manner the whole nation; having killed or exterminated a great part of them, and leaving his son-in-law Ireton to subdue the rest. But Ireton died there before the business was quite done, of the plague. This was one step more towards Cromwell's exaltation to the throne.

B. What a miserable condition was Ireland reduced to by the learning of the Roman, as well as England was by the learning of the Presbyterian clergy.

A. In the latter end of the preceding year the King was come from Paris to the Hague; and shortly after came thither from the Rump their agent Dorislaus, doctor of civil law, who had been employed in the drawing up of the charge against the late King. But the first night he came, as he was at supper, a company of cavaliers, near a dozen, entered his chamber, killed him, and got away. Not long after also their agent at Madrid, one Ascham, one that had written in defence of his masters, was killed in the same manner. About this time came out two books, one written by Salmasius, a Presbyterian, against the murder of the King; another written by Milton, an English Independent, in answer to it.

B. I have seen them both. They are very good Latin both, and hardly to be judged which is better; and both very ill reasoning, hardly to be judged which is worse; like two declamations, *pro* and *con*, made for exercise only in a rhetoric school by one and the same man. So like is a Presbyterian to an Independent.

A. In this year the Rump did not much at home; save that in the beginning they made England a

free state by an act which runs thus: "Be it enacted and declared by this present Parliament, and by the authority thereof, that the people of England, and all the dominions and territories thereunto belonging, are, and shall be, and are hereby constituted, made, and declared a commonwealth and free state, &c."

B. What did they mean by a free state and commonwealth? Were the people no longer to be subject to laws? They could not mean that: for the Parliament meant to govern them by their own laws, and punish such as broke them. Did they mean that England should not be subject to any foreign kingdom or commonwealth? That needed not be enacted, seeing there was no king nor people pretended to be their masters. What did they mean then?

A. They meant that neither this king, nor any king, nor any single person, but only that they themselves would be the people's masters, and would have set it down in those plain words, if the people could have been cozened with words intelligible, as easily as with words not intelligible.

After this they gave one another money and estates out of the lands and goods of the loyal party. They enacted also an engagement to be taken by every man, in these words: *You shall promise to be true and faithful to the commonwealth of England, as it is now established, without King or House of Lords.*

They banished also from within twenty miles of London all the royal party, forbidding also every one of them to depart more than five miles from his dwelling-house.

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B. They meant perhaps to have them ready, if need were, for a massacre. But what did the Scots in this time?

A. They were considering of the officers of the army which they were levying for the King, how they might exclude from command all such as had loyally served his father, and all Independents, and all such as commanded in Duke Hamilton's army; and these were the main things that passed this year.

The Marquis of Montrose, that in the year 1645 had with a few men and in little time done things almost incredible against the late King's enemies in Scotland, landed now again, in the beginning of the year 1650, in the north of Scotland, with commission from the present King, hoping to do him as good service as he had formerly done his father. But the case was altered; for the Scotch forces were then in England in the service of the Parliament; whereas now they were in Scotland, and many more for their intended invasion newly raised. Besides, the soldiers which the Marquis brought over were few, and foreigners; nor did the Highlanders come in to him, as he expected; insomuch as he was soon defeated, and shortly after taken, and, with more spiteful usage than revenge required, executed by the Covenanters of Edinburgh, May the 2nd.

B. What good could the King expect from joining with these men, who during the treaty discovered so much malice to him in one of his best servants?

A. No doubt, their churchmen being then prevalent, they would have done as much to this King as the English Parliament had done to his father, if

they could have gotten by it that which they foolishly aspired to, the government of the nation. I do not believe that the Independents were worse than the Presbyterians: both the one and the other were resolved to destroy whatsoever should stand in the way to their ambition. But necessity made the King pass over both this and many other indignities from them, rather than suffer the pursuit of his right in England to cool, and be little better than extinguished.

B. Indeed I believe a kingdom, if suffered to become an old debt, will hardly ever be recovered. Besides, the King was sure, wheresoever the victory lighted, he could lose nothing in the war but enemies.

A. About the time of Montrose's death, which was in May, Cromwell was yet in Ireland, and his work unfinished. But finding, or by his friends advertised, that his presence in the expedition now preparing against the Scots would be necessary to his design, he sent to the Rump to know their pleasure concerning his return. But for all that, he knew, or thought it was not necessary to stay for their answer, but came away, and arrived at London the 6th of June following, and was welcomed by the Rump. Now General Fairfax, who was truly what he pretended to be, a Presbyterian, had been so catechised by the Presbyterian ministers here, that he refused to fight against the brethren in Scotland; nor did the Rump nor Cromwell go about to rectify his conscience in that point. And thus Fairfax laying down his commission, Cromwell was now made general of all the forces in England and Ireland; which was another step to the sovereign power.

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B. Where was the King?

A. In Scotland, newly come over. He landed in the north, and was honourably conducted to Edinburgh, though all things were not yet well agreed on between the Scots and him. For though he had yielded to as hard conditions as the late King had yielded to in the Isle of Wight, yet they had still somewhat to add, till the King, enduring no more, departed from them towards the north again. But they sent messengers after him to pray him to return, but they furnished these messengers with strength enough to bring him back, if he should have refused. In fine they agreed; but would not suffer either the King, or any royalist, to have command in the army.

B. The sum of all is, the King was there a prisoner.

A. Cromwell from Berwick sends a declaration to the Scots, telling them he had no quarrel against the people of Scotland, but against the malignant party that had brought in the King, to the disturbance of the peace between the two nations; and that he was willing, either by conference to give and receive satisfaction, or to decide the justice of the cause by battle. To which the Scots answering, declare, that they will not prosecute the King's interest before and without his acknowledgment of the sins of his house and his former ways, and satisfaction given to God's people in both kingdoms. Judge by this whether the present King were not in as bad a condition here, as his father was in the hands of the Presbyterians of England.

B. Presbyterians are everywhere the same: they would fain be absolute governors of all they con-

verse with; and have nothing to plead for it, but that where they reign, it is God that reigns, and nowhere else. But I observe one strange demand, that the King should acknowledge the sins of his house; for I thought it had been certainly held by all divines, that no man was bound to acknowledge any man's sins but his own. PART IV.

A. The King having yielded to all that the Church required, the Scots proceeded in their intended war. Cromwell marched on to Edinburgh, provoking them all he could to battle; which they declining, and provisions growing scarce in the English army, Cromwell retired to Dunbar, despairing of success; and intending by sea or land to get back into England. And such was the condition which this general Cromwell, so much magnified for conduct, had brought his army to, that all his glories had ended in shame and punishment, if fortune and the faults of his enemies had not relieved him. For as he retired, the Scots followed him close all the way till within a mile of Dunbar. There is a ridge of hills, that from beyond Edinburgh goes winding to the sea, and crosses the highway between Dunbar and Berwick, at a village called Copperspeith, where the passage is so difficult, that had the Scots sent timely thither a very few men to guard it, the English could never have gotten home. For the Scots kept the hills, and needed not have fought but upon great advantage, and were almost two to one. Cromwell's army was at the foot of those hills, on the north side; and there was a great ditch or channel of a torrent between the hills and it; so that he could never have got home by land, nor without utter ruin of the

PART IV. army attempted to ship it; nor have stayed where he was, for want of provisions. Now Cromwell knowing the pass was free, and commanding a good party of horse and foot to possess it, it was necessary for the Scots to let them go, whom they bragged they had impounded, or else to fight; and therefore with the best of their horse they charged the English, and made them at first shrink a little. But the English foot coming on, the Scots were put to flight; and the flight of the horse hindered the foot from engaging; who therefore fled, as did also the rest of their horse. Thus the folly of the Scottish commanders brought all their odds to an even lay between two small and equal parties; wherein fortune gave the victory to the English, who were not many more in number than those that were killed and taken prisoners of the Scots; and the Church lost their cannon, bag and baggage, with 10,000 arms, and almost their whole army. The rest were got together by Lesley to Stirling.

B. This victory happened well for the King. For had the Scots been victors, the Presbyterians, both here and there, would have domineered again, and the King been in the same condition his father was in at Newcastle, in the hands of the Scottish army. For in pursuit of this victory, the English at last brought the Scots to a pretty good habit of obedience for the King, whensoever he should recover his right.

A. In pursuit of this victory the English marched to Edinburgh (quitted by the Scots), fortified Leith, and took in all the strength and castles they thought fit on this side the Frith, which now was become the bound betwixt the two nations. And the Scotch

ecclesiastics began to know themselves better; and resolved in their new army, which they meant to raise, to admit some of the royalists into command. Cromwell from Edinburgh marched towards Stirling, to provoke the enemy to fight, but finding danger in it returned to Edinburgh and besieged the castle. In the meantime he sent a party into the west of Scotland to suppress Strachan and Kerr, two great Presbyterians that were there levying forces for their new army. And in the same time the Scots crowned the King at Scone. PART IV.

The rest of this year was spent in Scotland, on Cromwell's part, in taking of Edinburgh Castle and in attempts to pass the Frith, or any other ways to get over to the Scottish forces; and on the Scots' part, in hastening their levies for the north.

B. What did the Rump at home during this time?

A. They voted liberty of conscience to the sectaries; that is, they plucked out the sting of Presbytery, which consisted in a severe imposing of odd opinions upon the people, impertinent to religion, but conducing to the advancement of the power of the Presbyterian ministers. Also they levied more soldiers, and gave the command of them to Harrison, now made major-general, a Fifth-monarchy-man; and of these soldiers two regiments of horse and one of foot were raised by the Fifth-monarchy-men and other sectaries, in thankfulness for this their liberty from the Presbyterian tyranny. Also they pulled down the late King's statue in the Exchange, and in the niche where it stood, caused to be written these words: *Exit tyrannus, Regum ultimus, etc.*

B. What good did that do them, and why did they not pull down the statues of all the rest of the Kings?

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A. What account can be given of actions that proceed not from reason, but spite and such-like passions? Besides this, they received ambassadors from Portugal and from Spain, acknowledging their power. And in the very end of the year they prepared ambassadors to the Netherlands to offer them friendship. All they did besides, was persecuting and executing of royalists.

In the beginning of the year 1651 General Dean arrived in Scotland; and on the 11th of April the Scottish Parliament assembled, and made certain acts in order to a better uniting of themselves, and better obedience to the King, who was now at Stirling with the Scottish forces he had, expecting more now in levying. Cromwell from Edinburgh went divers times towards Stirling to provoke the Scots to fight. There was no ford there to pass over his men; at last boats being come from London and Newcastle, Colonel Overton (though it was long first, for it was now July) transported 1,400 foot of his own, besides another regiment of foot and four troops of horse, and entrenched himself at Northferry on the other side; and before any help could come from Stirling, Major-General Lambert also was got over with as many more. By this time Sir John Browne was come to oppose them with 4,500 men, whom the English there defeated, killing about 2,000 and taking prisoners 1,600. This done, and as much more of the army transported as was thought fit, Cromwell comes before St. Johnstone's (from whence the Scottish Parliament, upon the news of his passing the Frith, was removed to Dundee) and summons it; and the same day had news brought him that the King was marching from

Stirling towards England; which was true. But notwithstanding the King was three days' march before him, he resolved to have the town before he followed him; and accordingly had it the next day by surrender.

B. What hopes had the King in coming into England, having before and behind him none, at least none armed, but his enemies?

A. Yes; there was before him the city of London, which generally hated the Rump, and might easily be reckoned for 20,000 well-armed soldiers; and most men believed they would take his part, had he come near the city.

B. What probability was there of that? Do you think the Rump was not sure of the services of the mayor and those that had command of the city militia? And if they had been really the King's friends, what need had they to stay for his coming up to London? They might have seized the Rump, if they had pleased, which had no possibility of defending themselves; at least they might have turned them out of the House.

A. This they did not; but on the contrary, permitted the recruiting of Cromwell's army, and the raising of men to keep the country from coming in to the King. The King began his march from Stirling the last of July, and August the 22nd came to Worcester by way of Carlisle with a weary army of about 13,000, whom Cromwell followed, and joining with the new levies environed Worcester with 40,000, and on the 3rd of September utterly defeated the King's army. Here Duke Hamilton, brother of him that was beheaded, was slain.

B. What became of the King?

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A. Night coming on, before the city was quite taken he left it; it being dark and none of the enemy's horse within the town to follow him, the plundering foot having kept the gates shut, lest the horse should enter and have a share of the booty. The King before morning got into Warwickshire, twenty-five miles from Worcester, and there lay disguised awhile, and afterwards went up and down in great danger of being discovered, till at last he got over into France, from Brighthelmstone in Sussex.

B. When Cromwell was gone, what was further done in Scotland?

A. Lieutenant-General Monk, whom Cromwell left there with 7,000, took Stirling August 14th by surrender, and Dundee the 3rd of September, by storm, because it resisted. This the soldiers plundered, and had good booty, because the Scots for safety had sent thither their most precious goods from Edinburgh and St. Johnstone's. He took likewise by surrender Aberdeen, and the place where the Scottish ministers first learned to play the fool, St. Andrew's. Also in the Highlands, Colonel Alured took a knot of lords and gentlemen, viz. four earls and four lords and above twenty knights and gentlemen, whom he sent prisoners into England. So that there was nothing more to be feared from Scotland: all the trouble of the Rump being to resolve what they should do with it. At last they resolved to unite and incorporate it into one commonwealth with England and Ireland. And to that end sent thither St. John, Vane, and other commissioners, to offer them this union by public declaration, and to warn them to choose their deputies

of shires and burgesses of towns, and send them to Westminster.

B. This was a very great favour.

A. I think so: and yet it was by many of the Scots, especially by the ministers and other Presbyterians, refused. The ministers had given way to the levying of money for the payment of the English soldiers; but to comply with the declaration of the English commissioners they absolutely forbad.

B. Methinks this contributing to the pay of their conquerors was some mark of servitude; whereas entering into the union made them free, and gave them equal privilege with the English.

A. The cause why they refused the union, rendered by the Presbyterians themselves, was this: that it drew with it a subordination of the Church to the civil state in the things of Christ.

B. This is a downright declaration to all kings and commonwealths in general, that a Presbyterian minister will be a true subject to none of them in the things of Christ; which things what they are, they will be judges themselves. What have we then gotten by our deliverance from the Pope's tyranny, if these petty men succeed in the place of it, that have nothing in them that can be beneficial to the public, except their silence? For their learning, it amounts to no more than an imperfect knowledge of Greek and Latin, and an acquired readiness in the Scripture language, with a gesture and tone suitable thereunto; but of justice and charity, the manners of religion, they have neither knowledge nor practice, as is manifest by the stories I have already told you. Nor do they distinguish between

PART IV. the godly and the ungodly but by conformity of design in men of judgment, or by repetition of their sermons in the common sort of people.

A. But this sullenness of the Scots was to no purpose. For they at Westminster enacted the union of the two nations and the abolition of monarchy in Scotland, and ordained punishment for those that should transgress that act.

B. What other business did the Rump this year?

A. They sent St. John and Strickland ambassadors to the Hague, to offer league to the United Provinces; who had audience March the 3rd; St. John in a speech showing those states what advantage they might have by this league in their trade and navigations, by the use of the English ports and harbours. The Dutch, though they showed no great forwardness in the business, yet appointed commissioners to treat with them about it. But the people were generally against it, calling the ambassadors and their followers, as they were, traitors and murderers, and made such tumults about their house that their followers durst not go abroad till the States had quieted them. The Rump advertised hereof, presently recalled them. The compliment which St. John gave to the commissioners at their taking leave, is worth your hearing. *You have,* said he, *an eye upon the event of the affairs of Scotland, and therefore do refuse the friendship we have offered. Now I can assure you, many in the Parliament were of opinion that we should not have sent any ambassadors to you till we had separated those matters between them and that king, and then expected your ambassadors to us. I now perceive our error, and that those gentle-*

men were in the right. In a short time you shall see that business ended; and then you will come and seek what we have freely offered, when it shall perplex you that you have refused our proffer.

B. St. John was not sure that the Scottish business would end as it did. For though the Scots were beaten at Dunbar, he could not be sure of the event of their entering England, which happened afterward.

A. But he guessed well: for within a month after the battle at Worcester, an act passed forbidding the importing of merchandize in other than English ships. The English also molested their fishing upon our coast. They also many times searched their ships (upon occasion of our war with France), and made some of them prize. And then the Dutch sent their ambassadors hither to desire what they before refused; but partly also to inform themselves what naval forces the English had ready, and how the people here were contented with the government.

B. How sped they?

A. The Rump showed now as little desire of agreement as the Dutch did then; standing upon terms never likely to be granted. First, for the fishing on the English coast, that they should not have it without paying for it. Secondly, that the English should have free trade from Middleburgh to Antwerp, as they had before their rebellion against the King of Spain. Thirdly, they demanded amends for the old, but never to be forgotten business of Amboyna. So that the war was already certain, though the season kept them from action till the spring following. The true quarrel, on the English part,

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was that their proffered friendship was scorned, and their ambassadors affronted; on the Dutch part, was their greediness to engross all traffic, and a false estimate of our and their own strength.

Whilst these things were doing, the relics of the war, both in Ireland and Scotland, were not neglected, though those nations were not fully pacified till two years after. The persecution also of royalists still continued, amongst whom was beheaded one Mr. Love, for holding correspondence with the King.

B. I had thought a Presbyterian minister, whilst he was such, could not be a royalist, because they think their assembly have the supreme power in the things of Christ; and by consequence they are in England, by a statute, traitors.

A. You may think so still: for though I called Mr. Love a royalist, I meant it only for that one act for which he was condemned. It was he who during the treaty at Uxbridge, preaching before the commissioners there, said, it was as possible for heaven and hell, as for the King and Parliament, to agree. Both he and the rest of the Presbyterians are and were enemies to the King's enemies, Cromwell and his fanatics, for their own and not for the King's sake. Their loyalty was like that of Sir John Hotham's, that kept the King out of Hull, and afterwards would have betrayed the same to the Marquis of Newcastle. These Presbyterians therefore cannot be rightly called loyal, but rather doubly perfidious, unless you think that as two negatives make an affirmative, so two treasons make loyalty.

This year also were reduced to the obedience of the Rump the islands of Scilly and Man, and the

Barbadoes, and St. Christopher's. One thing fell out that they liked not, which was, that Cromwell gave them warning to determine their sitting, according to the bill for triennial Parliaments.

B. That I think indeed was harsh.

A. In the year 1652, May the 14th, began the Dutch war, in this manner. Three Dutch men-of-war, with divers merchants from the straights, being discovered by one Captain Young, who commanded some English frigates, the said Young sent to their admiral to bid him strike his flag, a thing usually done in acknowledgment of the English dominion in the narrow seas; which accordingly he did. Then came up the vice-admiral, and being called to as the other was, to take down his flag, he answered plainly he would not: but after the exchange of four or five broadsides and mischief done on either part, he took it down. But Captain Young demanded also, either the vice-admiral himself or his ship to make good the damage already sustained; to which the vice-admiral answered that he had taken in his flag, but would defend himself and his ship. Whereupon Captain Young consulting with the captains of his other ships, lest the beginning of the war in this time of treaty should be charged upon himself, and night also coming on, thought fit to proceed no further.

B. The war certainly began at this time. But who began it?

A. The dominion of the seas belonging to the English, there can be no question but the Dutch began it: and that the said dominion belonged to the English, it was confessed at first by the admiral himself peaceably, and at last by the vice-admiral taking in their flags.

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About a fortnight after there happened another fight upon the like occasion. Van Tromp, with forty-two men-of-war, came to the back of Goodwin Sands, Major Bourne being then with a few of the Parliament ships in the Downs, and Blake with the rest further westward; and sent two captains of his to Bourne, to excuse his coming thither. To whom Bourne returned this answer, that the message was civil, but that it might appear real he ought to depart. So Van Tromp departed, meaning, now Bourne was satisfied, to sail towards Blake, and he did so; but so did also Bourne, for fear of the worst. When Van Tromp and Blake were near one another, Blake made a shot over Van Tromp's ship, as a warning to him to take in his flag. This he did thrice, and then Van Tromp gave him a broadside; and so began the fight, (at the beginning whereof Bourne came in), and lasted from two o'clock till night, the English having the better, and the flag, as before, making the quarrel.

B. What needs there, when both nations were heartily resolved to fight, to stand so much upon this compliment of who should begin? For as to the gaining of friends and confederates thereby, I think it was in vain; seeing princes and states in such occasions look not much upon the justice of their neighbours, but upon their own concernment in the event.

A. It is commonly so; but in this case, the Dutch knowing the dominion of the narrow seas to be a gallant title, and envied by all the nations that reach the shore, and consequently that they were likely to oppose it, did wisely enough in making this point the state of the quarrel. After this fight the

Dutch ambassadors residing in England sent a paper to the council of state, wherein they styled this last encounter a rash action, and affirmed it was done without the knowledge and against the will of their lords the States-general, and desired them that nothing might be done upon it in heat, which might become irreparable. The Parliament hereupon voted: 1. That the States-general should pay the charges they were at, and for the damages they sustained upon this occasion. 2. That this being paid, there should be a cessation of all acts of hostility, and a mutual restitution of all ships and goods taken. 3. And both these agreed to, that there should be made a league between the two commonwealths. These votes were sent to the Dutch ambassadors in answer of the said paper; but with a preamble setting forth the former kindnesses of England to the Netherlands, and taking notice of their new fleet of 150 men-of-war, without any other apparent design than the destruction of the English fleet.

B. What answer made the Dutch to this?

A. None. Van Tromp sailed presently to Zealand, and Blake with seventy men-of-war to the Orkney lands to seize their busses, and to wait for five Dutch ships from the East Indies. And Sir George Askew, newly returned from the Barbadoes, came into the Downs with fifteen men-of-war, where he was commanded to stay for a recruit out of the Thames.

Van Tromp being recruited now to 120 sail, made account to get in between Sir George Askew and the mouth of the river, but was hindered so long by contrary winds, that the merchants calling for his convoy; he could stay no longer and so he went

PART IV. back into Holland, and thence to Orkney, where he met with the said five East India ships and sent them home. And then he endeavoured to engage with Blake, but a sudden storm forced him to sea, and so dissipated his fleet that only forty-two came home in a body, the rest singly as well as they could. Blake also came home (but went first to the coast of Holland) with 900 prisoners and six men-of-war taken, which were part of twelve which he found and took guarding their busses. This was the first bout after the war declared.

In August following there happened a fight between De Ruyter, the admiral of Zealand, with fifty men-of-war, and Sir George Askew, near Plymouth, with forty, wherein Sir George had the better, and might have got an entire victory had the whole fleet engaged. Whatsoever was the matter, the Rump, though they rewarded him, never more employed him after his return in their service at sea: but voted for the year to come three generals, Blake that was one already, and Dean, and Monk.

About this time the Archduke Leopold besieging Dunkirk, and the French sending a fleet to relieve it, General Blake lighting on the French at Calais, and taking seven of their ships, was cause of the town's surrender.

In September they fought again, De Witt and De Ruyter commanding the Dutch, and Blake the English; and the Dutch were again worsted.

Again, in the end of November, Van Tromp with eighty men-of-war shewed himself at the back of Goodwin Sands; where Blake, though he had with him but forty, adventured to fight with him, and had much the worst, and night parting the fray,

retired into the river Thames; whilst Van Tromp keeping the sea, took some inconsiderable vessels from the English, and thereupon, as it was said, with a childish vanity hung out a broom from the main-top-mast, signifying he meant to sweep the seas of all English shipping.

After this, in February, the Dutch with Van Tromp were encountered by the English under Blake and Dean near Portsmouth, and had the worst. And these were all the encounters between them in this year in the narrow seas. They fought also once at Leghorn, where the Dutch had the better.

B. I see no great odds yet on either side; if there were any, the English had it.

A. Nor did either of them the more incline to peace. For the Hollanders, after they had sent ambassadors into Denmark, Sweden, Poland, and the Hanse Towns whence tar and cordage are usually had, to signify the declaration of the war, and to get them to their party, recalled their ambassadors from England. And the Rump without delay, gave them their parting audience, without abating a syllable of their former severe propositions; and presently, to maintain the war for the next year, laid a tax upon the people of 120,000*l. per mensem.*

B. What was done in the mean time at home?

A. Cromwell was now quarrelling with the last and greatest obstacle to his design, the Rump. And to that end there came out daily from the army petitions, addresses, remonstrances, and other such papers; some of them urging the Rump to dissolve themselves and make way for another Parliament. To which the Rump, unwilling to yield and not

PART IV. daring to refuse, determined for the end of their sitting the 5th of November 1654. But Cromwell meant not to stay so long.

In the meantime the army in Ireland was taking submissions, and granting transportations of the Irish, and condemning whom they pleased in a High Court of Justice erected there for that purpose. Amongst those that were executed, was hanged Sir Phelim O'Neale, who first began the rebellion. In Scotland the English built some citadels for the bridling of that stubborn nation. And thus ended the year 1652.

B. Come we then to the year 1653.

A. Cromwell wanted now but one step to the end of his ambition, and that was to set his foot upon the neck of this Long Parliament; which he did April the 23rd of this present year 1653, a time very seasonable. For though the Dutch were not mastered yet, they were much weakened; and what with prizes from the enemy and squeezing the royal party, the treasury was pretty full, and the tax of 120,000*l.* a month began to come in; all which was his own in right of the army.

Therefore, without more ado, attended by the Major-Generals Lambert and Harrison, and some other officers, and as many soldiers as he thought fit, he went to the Parliament House, and dissolved them, turning them out, and locked up the doors. And for this action he was more applauded by the people than for any of his victories in the war, and the Parliament men as much scorned and derided.

B. Now that there was no Parlirment, who had the supreme power?

A. If by power you mean the right to govern,

nobody had it. If you mean the supreme strength, it was clearly in Cromwell, who was obeyed as general of all the forces in England, Scotland, and Ireland.

B. Did he pretend that for title?

A. No: but presently after he invented a title, which was this; that he was necessitated for the defence of the cause, for which at first the Parliament had taken up arms, that is to say, rebelled, to have recourse to extraordinary actions. You know the pretence of the Long Parliament's rebellion was *salus populi*, the safety of the nation against a dangerous conspiracy of Papists and a malignant party at home; and that every man is bound, as far as his power extends, to procure the safety of the whole nation, which none but the army were able to do, and the Parliament had hitherto neglected. Was it not then the general's duty to do it? Had he not therefore right? For that law of *salus populi* is directed only to those that have power enough to defend the people; that is, to them that have the supreme power.

B. Yes, certainly, he had as good a title as the Long Parliament. But the Long Parliament did represent the people; and it seems to me that the sovereign power is essentially annexed to the representative of the people.

A. Yes, if he that makes a representative, that is in the present case the King, do call them together to receive the sovereign power, and he divest himself thereof; otherwise not. Nor was ever the Lower House of Parliament the representative of the whole nation, but of the commons only; nor had that House the power to oblige by their acts or ordinances, any lord or any priest.

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B. Did Cromwell come in upon the only title of *salus populi?*

A. This is a title that very few men understand. His way was to get the supreme power conferred upon him by Parliament. Therefore he called a Parliament, and gave it the supreme power, to the end that they should give it to him again. Was not this witty? First, therefore, he published a declaration of the causes why he dissolved the Parliament. The sum whereof was, that instead of endeavouring to promote the good of God's people, they endeavoured, by a bill then ready to pass, to recruit the House and perpetuate their own power. Next he constituted a council of state of his own creatures, to be the supreme authority of England; but no longer than till the next Parliament should be called and met. Thirdly, he summoned 142 persons, such as he himself or his trusty officers made choice of; the greatest part of whom were instructed what to do; obscure persons, and most of them fanatics, though styled by Cromwell men of approved fidelity and honesty. To these the council of state surrendered the supreme authority, and not long after these men surrendered it to Cromwell. July the 4th this Parliament met, and chose for their Speaker one Mr. Rous, and called themselves from that time forward the Parliament of England. But Cromwell, for the more surety, constituted also a council of state; not of such petty fellows as most of these were, but of himself and his principal officers. These did all the business, both public and private; making ordinances, and giving audiences to foreign ambassadors. But he had now more enemies than before. Harrison, who was the

head of the Fifth-monarchy-men, laying down his commission, did nothing but animate his party against him; for which afterwards he was imprisoned. This little Parliament in the meantime were making of acts so ridiculous and displeasing to the people, that it was thought he chose them on purpose to bring all ruling Parliaments into contempt, and monarchy again into credit.

B. What acts were these?

A. One of them was, that all marriages should be made by a justice of peace, and the banns asked three several days in the next market: none were forbidden to be married by a minister, but without a justice of peace the marriage was to be void: so that divers wary couples, to be sure of one another, howsoever they might repent it afterwards, were married both ways. Also they abrogated the engagement, whereby no man was admitted to sue in any court of law that had not taken it, that is, that had not acknowledged the late Rump.

B. Neither of these did any hurt to Cromwell.

A. They were also in hand with an act to cancel all the present laws and law-books, and to make a new code more suitable to the humour of the Fifth-monarchy-men; of whom there were many in this Parliament. Their tenet being, that there ought none to be sovereign but King Jesus, nor any to govern under him but the saints. But their authority ended before this act passed.

B. What is this to Cromwell?

A. Nothing yet. But they were likewise upon an act, now almost ready for the question, that Parliaments henceforward, one upon the end of another, should be perpetual.

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B. I understand not this; unless Parliaments can beget one another like animals, or like the phœnix.

A. Why not like the phœnix? Cannot a Parliament at the day of their expiration send out writs for a new one?

B. Do you think they would not rather summon themselves anew; and to save the labour of coming again to Westminster, sit still where they were? Or if they summon the country to make new elections, and then dissolve themselves, by what authority shall the people meet in their county courts, there being no supreme authority standing?

A. All they did was absurd, though they knew not that; no nor this, whose design was upon the sovereignty, the contriver of this act, it seems, perceived not; but Cromwell's party in the House saw it well enough. And therefore, as soon as it was laid, there stood up one of the members and made a motion, that since the commonwealth was like to receive little benefit by their sitting, they should dissolve themselves. Harrison and they of his sect were troubled here at, and made speeches against it; but Cromwell's party, of whom the speaker was one, left the House, and with the mace before them went to Whitehall, and surrendered their power to Cromwell that had given it to them. And so he got the sovereignty by an act of Parliament; and within four days after, December the 16th, was installed Protector of the three nations, and took his oath to observe certain rules of governing, engrossed in parchment and read before him. The writing was called *the instrument.*

B. What were the rules he swore to?

A. One was, to call a Parliament every third year,

of which the first was to begin September the 3rd following.

B. I believe he was a little superstitious in the choice of September the 3rd, because it was lucky to him in 1650 and 1651, at Dunbar and Worcester; but he knew not how lucky the same would be to the whole nation in 1658 at Whitehall.

A. Another was, that no Parliament should be dissolved till it had sitten five months; and those bills that they presented to him, should be passed by him within twenty days, or else they should pass without him.

A third, that he should have a council of state of not above twenty-one, nor under thirteen; and that upon the Protector's death this council should meet, and before they parted choose a new Protector. There were many more besides, but not necessary to be inserted.

B. How went on the war against the Dutch?

A. The generals for the English were Blake, and Dean, and Monk; and Van Tromp for the Dutch; between whom was a battle fought the 2nd of June, which was a month before the beginning of this little Parliament; wherein the English had the victory, and drove the enemies into their harbours, but with the loss of General Dean, slain by a cannon-shot. This victory was great enough to make the Dutch send over ambassadors into England, in order to a treaty; but in the meantime they prepared and put to sea another fleet, which likewise, in the end of July, was defeated by General Monk, who got now a greater victory than before; and this made the Dutch descend so far as to buy their peace with the payment of the charge of the

PART IV. war, and with the acknowledgment, amongst other articles, that the English had the right of the flag.

This peace was concluded in March, being the end of this year, but not proclaimed till April; the money, it seems, being not paid till then.

The Dutch war being now ended, the Protector sent his youngest son Henry into Ireland, whom also some time after he made lieutenant there; and sent Monk lieutenant-general into Scotland, to keep those nations in obedience. Nothing else worth remembering was done this year at home; saving the discovery of a plot of royalists, as was said, upon the life of the Protector, who all this while had intelligence of the King's designs from a traitor in his court, who afterwards was taken in the manner and killed.

B. How came he into so much trust with the King?

A. He was the son of a colonel that was slain in the wars on the late King's side. Besides, he pretended employment from the King's loyal and loving subjects here, to convey to his Majesty money as they from time to time should send him; and to make this credible, Cromwell himself caused money to be sent to him.

The following year, 1654, had nothing of war, but was spent in civil ordinances, in appointing of judges, preventing of plots (for usurpers are jealous), and in executing the King's friends and selling their lands. The 3rd of September, according to the instrument, the Parliament met; in which there was no House of Lords, and the House of Commons was made, as formerly, of knights and burgesses; but not as formerly, of two burgesses for a

borough and two knights for a county; for boroughs for the most part had but one burgess, and some counties six or seven knights. Besides, there were twenty members for Scotland, and as many for Ireland. So that now Cromwell had nothing else to do but to show his art of government upon six coach-horses newly presented to him, which, being as rebellious as himself, threw him out of the coach-box and almost killed him.

B. This Parliament, which had seen how Cromwell had handled the two former, the long one and the short one, had surely learned the wit to behave themselves better to him than those had done?

A. Yes, especially now that Cromwell in his speech at their first meeting had expressly forbidden them to meddle either with the government by a single person and Parliament, or with the militia, or with perpetuating of Parliaments, or taking away liberty of conscience; and told them also that every member of the House, before they sat, must take a recognition of his power in divers points. Whereupon, of above 400 there appeared not above 200 at first; though afterwards some relenting, there sat about 300. Again, just at their sitting down he published some ordinances of his own, bearing date before their meeting; that they might see he took his own acts to be as valid as theirs. But all this could not make them know themselves. They proceeded to debate of every article of the recognition.

B. They should have debated that before they had taken it.

A. But then they had never been suffered to sit. Cromwell being informed of their stubborn pro-

PART IV. ceedings, and out of hope of any supply from them, dissolved them.

All that passed besides in this year, was the exercise of the High Court of Justice upon some royalists for plots.

In the year 1655 the English, to the number of near 10,000, landed in Hispaniola, in hope of the plunder of the gold and silver, whereof they thought there was great abundance in the town of Santo Domingo; but were well beaten by a few Spaniards, and with the loss of near 1,000 men, went off to Jamaica and possessed it.

This year also the royal party made another attempt in the west; and proclaimed there King Charles the Second; but few joining with them, and some falling off, they were soon suppressed, and many of the principal persons executed.

B. In these many insurrections, the royalists, though they meant well, yet they did but disservice to the King by their impatience. What hope had they to prevail against so great an army as the Protector had ready? What cause was there to despair of seeing the King's business done better by the dissension and ambition of the great commanders in that army, whereof many had the favour to be as well esteemed amongst them as Cromwell himself?

A. That was somewhat uncertain. The Protector, being frustrated of his hope of money at Santo Domingo, resolved to take from the royalists the tenth part yearly of their estates. And to this end chiefly, he divided England into eleven major-generalships, with commission to every major-general to make a roll of the names of all suspected

persons of the King's party, and to receive the tenth part of their estates within his precinct; as also to take caution from them not to act against the state, and to reveal all plots that should come to their knowledge; and to make them engage the like for their servants. They had commission also to forbid horse-races and concourse of people, and to receive and account for this decimation.

B. By this the usurper might easily inform himself of the value of all the estates in England, and of the behaviour and affection of every person of quality; which has heretofore been taken for very great tyranny.

A. The year 1656 was a Parliament-year by the instrument. Between the beginning of this year and the day of the Parliament's sitting, which was September 17, these major-generals, resided in several provinces, behaving themselves most tyrannically. Amongst other of their tyrannies was the awing of elections, and making themselves and whom they pleased to be returned members for the Parliament; which was also thought a part of Cromwell's design in their constitution: for he had need of a giving Parliament, having lately, upon a peace made with the French, drawn upon himself a war with Spain.

This year it was that Captain Stainer set upon the Spanish Plate-fleet, being eight in number, near Cadiz; whereof he sunk two, and took two, there being in one of them two millions of pieces of eight, which amounts to 400,000*l.* sterling.

This year also it was that James Naylor appeared at Bristol, and would be taken for Jesus Christ. He wore his beard forked, and his hair composed

PART IV. to the likeness of that in the *Volto Santo ;* and being questioned, would sometimes answer *Thou sayest it.* He had also his disciples, that would go by his horse's side to the mid-leg in dirt. Being sent for by the Parliament, he was sentenced to stand on the pillory, to have his tongue bored through, and to be marked on the forehead with the letter B, for blasphemy, and to remain in Bridewell. Lambert, a great favourite of the army, endeavoured to save him, partly because he had been his soldier, and partly to curry favour with the sectaries of the army ; for he was now no more in the Protector's favour, but meditating how he might succeed him in his power.

About two years before this, there appeared in Cornwall a prophetess, much famed for her dreams and visions, and hearkened to by many, whereof some were eminent officers. But she and some of her accomplices being imprisoned, we heard no more of her.

B. I have heard of another, one Lilly, that prophecied all the time of the Long Parliament. What did they to him?

A. His prophecies were of another kind ; he was a writer of almanacs, and a pretender to a pretended art of judicial astrology ; a meer cozener to get maintenance from a multitude of ignorant people ; and no doubt had been called in question, if his prophecies had been any way disadvantageous to that Parliament.

B. I understand not how the dreams and prognostications of madmen (for such I take to be all those that foretell future contingencies) can be of any great disadvantage to the commonwealth.

A. Yes, yes: know, there is nothing that renders human counsels difficult, but the uncertainty of future time; nor that so well directs men in their deliberations, as the foresight of the sequels of their actions; prophecy being many times the principal cause of the event foretold. If, upon some prediction, the people should have been made confident that Oliver Cromwell and his army should be, upon a day to come, utterly defeated; would not every one have endeavoured to assist, and to deserve well of the party that should give him that defeat? Upon this account it was that fortune-tellers and astrologers were so often banished out of Rome.

The last memorable thing this year, was a motion made by a member of the House, an alderman of London, that the Protector might be petitioned and advised by the House to leave the title of Protector, and take upon him that of King.

B. That was indeed a bold motion, and which would, if prosperous, have put an end to many men's ambition, and to the licentiousness of the whole army. I think the motion was made on purpose to ruin both the Protector himself and his ambitious officers.

A. It may be so. In the year 1657 the first thing the Parliament did, was the drawing up of this petition to the Protector, to take upon him the government of the three nations, with the title of King. As of other Parliaments, so of this, the greatest part had been either kept out of the House by force, or else themselves had forborne to sit and become guilty of setting up this King Oliver. But those few that sat, presented their petition to the Protector, April the 9th, in the Banqueting-

PART IV. house at Whitehall; where Sir Thomas Widdrington, the Speaker, used the first arguments, and the Protector desired some time to seek God, the business being weighty. The next day they sent a committee to him to receive his answer; which answer being not very clear, they pressed him again for a resolution; to which he made answer in a long speech, that ended in a peremptory refusal. And so retaining still the title of Protector, he took upon him the government according to certain articles contained in the said petition.

B. What made him refuse the title of King?

A. Because he durst not take it at that time; the army being addicted to their great officers, and amongst their great officers many hoping to succeed him, and, the succession having been promised to Major-General Lambert, would have mutinied against him. He was therefore forced to stay for a more propitious conjuncture.

B. What were those articles?

A. The most important of them were: 1. That he would exercise the office of chief-magistrate of England, Scotland, and Ireland, under the title of Protector, and govern the same according to the said petition and advice: and that he would in his life-time name his successor.

B. I believe the Scots, when they first rebelled, never thought of being governed absolutely, as they were by Oliver Cromwell.

A. 2. That he should call a Parliament every three years at farthest. 3. That those persons which were legally chosen members, should not be secluded without consent of the House. In allowing this clause, the Protector observed not that the secluded members of this same Parliament, are there-

by re-admitted. 4. The members were qualified. 5. The power of the other House was defined. 6. That no law should be made but by act of Parliament. 7. That a constant yearly revenue of a million of pounds should be settled for the maintenance of the army and navy; and 300,000*l.* for the support of the government, besides other temporary supplies as the House of Commons should think fit. 8. That all the officers of state should be chosen by the Parliament. 9. That the Protector should encourage the ministry. Lastly, that he should cause a profession of religion to be agreed on and published. There are divers others of less importance. Having signed the articles, he was presently with great ceremony installed anew.

B. What needed that, seeing he was still but Protector?

A. But the articles of this petition were not all the same with those of his former instrument. For now there was to be another House; and whereas before, his council was to name his successor, he had power now to do it himself; so that he was an absolute monarch, and might leave the succession to his son if he would, and so successively, or transfer it to whom he pleased.

The ceremony being ended, the Parliament adjourned to the 20th of January following; and then the other House also sat with their fellows.

The House of Commons being now full, took little notice of the other House, wherein there were not of sixty persons above nine lords; but fell a questioning all that their fellows had done, during the time of their seclusion; whence had followed the avoidance of the power newly placed in the Protector. Therefore, going to the House, he

PART IV. made a speech to them, ending in these words; *By the living God, I must, and do dissolve you.*

In this year, the English gave the Spaniard another great blow at Santa Cruz, not much less than they had given him the year before at Cadiz.

About the time of the dissolution of this Parliament, the royalists had another design against the Protector; which was, to make an insurrection in England, the King being in Flanders ready to second them with an army thence. But this also was discovered by treachery, and came to nothing but the ruin of those that were engaged in it; whereof many in the beginning of the next year were by a High Court of Justice imprisoned, and some executed.

This year also was Major-General Lambert put out of all employment, a man second to none but Oliver in the favour of the army. But because he expected by that favour, or by promise from the Protector, to be his successor in the supreme power, it would have been dangerous to let him have command in the army; the Protector having designed for his successor his eldest son Richard.

In the year 1658, September the 3rd, the Protector died at Whitehall; having ever since his last establishment been perplexed with fear of being killed by some desperate attempt of the royalists.

Being importuned in his sickness by his privy-council to name his successor, he named his son Richard; who, encouraged thereunto, not by his own ambition, but by Fleetwood, Desborough, Thurlow, and other of his council, was content to take it upon him; and presently, addresses were made to him from the armies in England, Scotland and Ireland. His first business was the chargeable and splendid funeral of his father.

Thus was Richard Cromwell seated on the imperial throne of England, Ireland, and Scotland, successor to his father; lifted up to it by the officers of the army then in town, and congratulated by all the parts of the army throughout the three nations; scarce any garrison omitting their particular flattering addresses to him.

B. Seeing the army approved of him, how came he so soon cast off?

A. The army was inconstant; he himself irresolute, and without any military glory. And though the two principal officers had a near relation to him; yet neither of them, but Lambert, was the great favourite of the army; and by courting Fleetwood to take upon him the Protectorship, and by tampering with the soldiers, he had gotten again to be a colonel. He and the rest of the officers had a council at Wallingford House, where Fleetwood dwelt, for the dispossessing of Richard; though they had not yet considered how the nations should be governed afterwards. For from the beginning of the rebellion, the method of ambition was constantly this, first to destroy, and then to consider what they should set up.

B. Could not the Protector, who kept his court at Whitehall, discover what the business of the officers was at Wallingford House, so near him?

A. Yes, he was by divers of his friends informed of it; and counselled by some of them, who would have done it, to kill the chief of them. But he had not courage enough to give them such a commission. He took, therefore, the counsel of some milder persons, which was to call a Parliament. Whereupon writs were presently sent to those, that were in the last Parliament, of the other House,

PART IV. and other writs to the sheriffs for the election of knights and burgesses, to assemble on the 27th of January following. Elections were made according to the ancient manner, and a House of Commons now of the right English temper, and about four hundred in number, including twenty for Scotland and as many for Ireland. Being met, they take themselves, without the Protector and other House, to be a Parliament, and to have the supreme power of the three nations.

For the first business, they intended the power of that other House: but because the Protector had recommended to them for their first business an act, already drawn up, for the recognition of his Protectoral power, they began with that; and voted after a fortnight's deliberation, that an act should be made whereof this act of recognition should be part; and that another part should be for the bounding of the Protector's power, and for the securing the privileges of Parliament and liberties of the subject; and that all should pass together.

B. Why did these men obey the Protector at first, in meeting upon his only summons? Was not that as full a recognition of his power as was needful? Why by this example did they teach the people that he was to be obeyed, and then by putting laws upon him, teach them the contrary? Was it not the Protector that made the Parliament? Why did they not acknowledge their maker?

A. I believe it is the desire of most men to bear rule; but few of them know what title one has to it more than another, besides the right of the sword.

B. If they acknowledged the right of the sword, they were neither just nor wise to oppose the present government, set up and approved by all the

forces of the three kingdoms. The principles of this House of Commons were, no doubt, the very same with theirs that began the rebellion; and would, if they could have raised a sufficient army, have done the same against the Protector; and the general of their army would, in like manner, have reduced them to a Rump. For they that keep an army, and cannot master it, must be subject to it as much as he that keeps a lion in his house. The temper of all the Parliaments, since the time of Queen Elizabeth, has been the same with the temper of this Parliament; and shall always be such, as long as the Presbyterians and men of democratical principles have the like influence upon the elections.

A. After, they resolved concerning the other House, that during this Parliament they would transact with it, but without intrenching upon the right of the peers, to have writs sent to them in all future Parliaments. These votes being passed, they proceed to another, wherein they assume to themselves the power of the militia. Also to show their supreme power, they delivered out of prison some of those that had been, they said, illegally committed by the former Protector. Other points concerning civil rights and concerning religion, very pleasing to the people, were now also under their consideration. So that at the end of this year the Protector was no less jealous of the Parliament, than of the council of officers at Wallingford House.

B. Thus it is when ignorant men will undertake reformation. Here are three parties, the Protector, the Parliament, and the Army. The Protector against Parliament and army, the Parliament against army and Protector, and the army against Protector and Parliament.

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A. In the beginning of 1659 the Parliament passed divers other acts. One was, to forbid the meetings in council of the army-officers without order from the Protector and both houses. Another, that no man shall have any command or trust in the army, who did not first, under his hand, engage himself never to interrupt any of the members, but that they might freely meet and debate in the House. And to please the soldiers, they voted to take presently into their consideration the means of paying them their arrears. But whilst they were considering this, the Protector, according to the first of those acts, forbad the meeting of officers at Wallingford House. This made the government, which by the disagreement of the Protector and army was already loose, to fall in pieces. For the officers from Wallingford House, with soldiers enough, came over to Whitehall, and brought with them a commission ready drawn, giving power to Desborough to dissolve the Parliament, for the Protector to sign; which also, his heart and his party failing him, he signed. The Parliament nevertheless continued sitting; but at the end of the week the House adjourned till the Monday after, being April the 25th. At their coming on Monday morning, they found the door of the House shut up, and the passages to it filled with soldiers, who plainly told them they must sit no longer. Richard's authority and business in town being thus at an end, he retired into the country; where within a few days, upon promise of the payment of his debts, which his father's funeral had made great, he signed a resignation of his Protectorship.

B. To whom?

A. To nobody. But after ten days' cessation of

the sovereign power, some of the Rumpers that were in town, together with the old Speaker Mr. William Lenthal, resolved amongst themselves, and with Lambert, Hazlerig, and other officers, who were also Rumpers, in all forty-two, to go into the House; which they did, and were by the army declared to be the Parliament.

There were also in Westminster Hall at that time, about their private business, some few of those whom the army had secluded in 1648, and were called the secluded members. These knowing themselves to have been elected by the same authority, and to have the same right to sit, attempted to get into the House, but were kept out by the soldiers. The first vote of the Rump reseated was, that such persons as, heretofore members of this Parliament, have not sitten in this Parliament since the year 1648, shall not sit in this House till further order of the Parliament. And thus the Rump recovered their authority May the 7th 1659, which they lost in April 1653.

B. Seeing there had been so many shiftings of the supreme authority, I pray you, for memory's sake, repeat them briefly in times and order.

A. First, from 1640 to 1648, when the King was murdered, the sovereignty was disputed between King Charles I and the Presbyterian Parliament. Secondly, from 1648 to 1653, the power was in that part of the Parliament which voted the trial of the King, and declared themselves, without King or House of Lords, to have the supreme authority of England and Ireland. For there were in the Long Parliament two factions, the Presbyterian and Independent; the former whereof sought only the subjection of the King, not his destruction di-

PART IV. rectly; the latter sought directly his destruction; and this part is it, which was called the Rump. Thirdly, from April the 20th to July the 4th, the supreme power was in the hands of a council of state constituted by Cromwell. Fourthly, from July the 4th to December the 12th of the same year, it was in the hands of men called unto it by Cromwell, whom he termed men of fidelity and integrity, and made them a Parliament; which was called, in contempt of one of the members, Barebone's Parliament. Fifthly, from December the 12th 1653 to September the 3rd 1658, it was in the hands of Oliver Cromwell, with the title of Protector. Sixthly, from September the 3rd 1658 to April the 25th 1659, Richard Cromwell had it as successor to his father. Seventhly, from April the 25th 1659 to May the 7th of the same year, it was nowhere. Eighthly, from May the 7th 1659, the Rump, which was turned out of doors in 1653, recovered it again; and shall lose it again to a committee of safety, and again recover it, and again lose it to the right owner.

B. By whom, and by what art, came the Rump to be turned out the second time?

A. One would think them safe enough. The army in Scotland, which when it was in London had helped Oliver to put down the Rump, submitted now, begged pardon, and promised obedience. The soldiers in town had their pay mended, and the commanders everywhere took the old engagement, whereby they had acknowledged their authority heretofore. They also received their commissions in the House itself from the speaker, who was generalissimo. Fleetwood was made lieutenant-general, with such and so many limitations as were thought necessary by the Rump, that remembered

how they had been served by the general, Oliver. Also Henry Cromwell, lord-lieutenant of Ireland, having resigned his commission by command, returned into England.

But Lambert, to whom, as was said, Oliver had promised the succession, and who as well as the Rump knew the way to the Protectorship by Oliver's own footsteps, was resolved to proceed in it upon the first opportunity; which presented itself presently after. Besides some plots of royalists, whom after the old fashion they again persecuted, there was an insurrection made against them by Presbyterians in Cheshire, headed by Sir George Booth, one of the secluded members. They were in number about 3,000, and their pretence was for a free Parliament. There was a great talk of another rising, or endeavour to rise, in Devonshire and Cornwall at the same time. To suppress Sir George Booth, the Rump sent down more than a sufficient army under Lambert; which quickly defeated the Cheshire party, and recovered Chester, Liverpool, and all the other places they had seized. Divers also of their commanders in and after the battle were taken prisoners, whereof Sir George Booth himself was one.

This exploit done, Lambert, before his return, caressed his soldiers with an entertainment at his own house in Yorkshire, and got their consent to a petition to be made to the House, that a general might be set up in the army; as being unfit that the army should be judged by any power extrinsic to itself.

B. I do not see that unfitness.

A. Nor I. But it was, as I have heard, an axiom of Sir Henry Vane's. But it so much displeased the Rump, that they voted, that the having of more

PART IV. generals in the army than were already settled, was unnecessary, burthensome, and dangerous to the commonwealth.

B. This was not Oliver's method; for though this Cheshire victory had been as glorious as that of Oliver at Dunbar, yet it was not the victory that made Oliver general, but the resignation of Fairfax, and the proffer of it to Cromwell by the Parliament.

A. But Lambert thought so well of himself, as to expect it. Therefore, at his return to London, he and the other officers assembling at Wallingford House, drew their petition into form, and called it a representation; wherein the chief point was to have a general, but many others of less importance were added; and this they represented to the House, October the 4th, by Major-General Desborough. And this so far awed them, as to teach them so much good manners as to promise to take it presently into debate. Which they did; and October the 12th, having recovered their spirits, voted "that the commissions of Lambert, Desborough, and others of the council at Wallingford House, should be void: item, that the army should be governed by a commission to Fleetwood, Monk, Hazlerig, Walton, Morley, and Overton, till February the 12th following." And to make this good against the force they expected from Lambert, they ordered Hazlerig and Morley to issue warrants to such officers as they could trust, to bring their soldiers next morning into Westminster; which was done somewhat too late. For Lambert had first brought his soldiers thither, and beset the House, and turned back the Speaker, which was then coming to it; but Hazlerig's forces marching about St. James's park-wall, came into St. Margaret's churchyard; and so both parties looked all day one

upon another, like enemies, but offered not to fight: whereby the Rump was put out of possession of the House; and the officers continued their meeting as before, at Wallingford House.

There they chose from among themselves, with some few of the city, a committee, which they called a committee of safety, whereof the chief were Lambert and Vane; who, with the advice of a general council of officers, had power to call delinquents to trial, to suppress rebellions, to treat with foreign states, &c. You see now the Rump cut off, and the supreme power, which is charged with *salus populi*, transferred to a council of officers. And yet Lambert hopes for it in the end. But one of their limitations was, that they should within six weeks present to the army a new model of the government. If they had done so, do you think they would have preferred Lambert or any other to the supreme authority therein, rather than themselves?

B. I think not. When the Rump had put into commission, amongst a few others, for the government of the army, that is to say, for the government of the three nations, General Monk, already commander-in-chief of the army in Scotland, and that had done much greater things in this war than Lambert, how durst they leave him out of this committee of safety? Or how could Lambert think that General Monk would forgive it, and not endeavour to fasten the Rump again?

A. They thought not of him; his gallantry had been shown on remote stages, Ireland and Scotland. His ambition had not appeared here in their contentions for the government, but he had complied both with Richard and the Rump. After General Monk had signified by letter his dislike of the pro-

PART IV. ceedings of Lambert and his fellows, they were much surprised, and began to think him more considerable than they had done; but it was too late.

B. Why? His army was too small for so great an enterprise.

A. The general knew very well his own and their forces, both what they were then, and how they might be augmented, and what generally city and country wished for, which was the restitution of the King: which to bring about, there needed no more but to come with his army, though not very great, to London: to the doing whereof, there was no obstacle but the army with Lambert. What could he do in this case? If he had declared presently for the King or for a free Parliament, all the armies in England would have joined against him, and assuming the title of a Parliament would have furnished themselves with money.

General Monk, after he had thus quarrelled by his letter with the council-officers, secured first those officers of his own army, which were Anabaptists and therefore not to be trusted, and put others into their places; then drawing his forces together, marched to Berwick. Being there, he indicted a convention of the Scots, of whom he desired that they would take order for the security of that nation in his absence, and raise some maintenance for his army in their march. The convention promised for the security of the nation their best endeavour, and raised him a sum of money, not great, but enough for his purpose, excusing themselves upon their present wants. On the other side, the committee of safety with the greatest and best part of their army sent Lambert to oppose him; but at the same time, by divers

messages and mediators urged him to a treaty; which he consented to, and sent three officers to London to treat with as many of theirs. These six suddenly concluded, without power from the general, upon these articles: that the King be excluded; a free state settled; the ministry and universities encouraged; with divers others. Which the general liked not, and imprisoned one of his commissioners for exceeding his commission. Whereupon another treaty was agreed on, of five to five. But whilst these treaties were in hand, Hazlerig, a member of the Rump, seized on Portsmouth, and the soldiers sent by the committee of safety to reduce it, instead of that, entered into the town and joined with Hazlerig. Secondly, the city renewed their tumults for a free Parliament. Thirdly, the Lord Fairfax, a member also of the Rump, and greatly favoured in Yorkshire, was raising forces there behind Lambert, who being now between two armies, his enemies would gladly have fought with the general. Fourthly, there came news that Devonshire and Cornwall were listing of soldiers. Lastly, Lambert's army wanting money, and sure they should not be furnished from the council of officers, which had neither authority nor strength to levy money, grew discontented, and for their free quarters were odious to the northern countries.

B. I wonder why the Scots were so ready to furnish General Monk with money; for they were no friends to the Rump.

A. I know not; but I believe the Scots would have parted with a greater sum, rather than the English should not have gone together by the ears amongst themselves. The council of officers being now beset with so many enemies, produced speedily their

PART IV. model of government; which was to have a free Parliament, which should meet December the 15th, but with such qualifications of no King, no House of Lords, as made the city more angry than before. To send soldiers into the west to suppress those that were rising there, they durst not, for fear of the city; nor could they raise any other for want of money. There remained nothing but to break, and quitting Wallingford House to shift for themselves. This coming to the knowledge of their army in the north, they deserted Lambert; and the Rump, the 26th of December, repossessed the House.

B. Seeing the Rump was now reseated, the business pretended by General Monk for his marching to London, was at an end.

A. The Rump, though seated, was not well settled, but in the midst of so many tumults for a free Parliament had as much need of the general's coming up now as before. He therefore sent them word, that because he thought them not yet secure enough, he would come up to London with his army; which they not only accepted, but also intreated him to do, and voted him for his services 1000*l.* a year.

The general marching towards London, the country every where petitioned him for a free Parliament. The Rump, to make room in London for his army, dislodged their own. The general for all that, had not let fall a word in all this time that could be taken for a declaration of his final design.

B. How did the Rump revenge themselves on Lambert?

A. They never troubled him; nor do I know any cause of so gentle dealing with him: but certainly Lambert was the ablest of any officer they had

to do them service, when they should have means and need to employ him. After the general was come to London, the Rump sent to the city for their part of a tax of 100,000*l.* a month, for six months, according to an act which the Rump had made formerly before their disseisin by the committee of safety. But the city, who were adverse to the Rump, and keen upon a free Parliament, could not be brought to give their money to their enemies and to purposes repugnant to their own. Hereupon the Rump sent order to the general to break down the city gates and their portcullises, and to imprison certain obstinate citizens. This he performed, and it was the last service he did them.

About this time the commission, by which general Monk with others had the government of the army put into their hands by the Rump before the usurpation of the council of officers, came to expire; which the present Rump renewed.

B. He was thereby the sixth part of the general of the whole forces of the commonwealth. If I had been as the Rump, he should have been sole general. In such cases as this, there cannot be a greater vice than pinching. Ambition should be liberal.

A. After the pulling down of the city gates, the general sent a letter to the Rump, to let them know that that service was much against his nature, and to put them in mind how well the city had served the Parliament throughout the whole war.

B. Yes. But for the city the Parliament never could have made the war, nor the Rump ever have murdered the King.

A. The Rump considered not the merit of the city, nor the good-nature of the general. They

PART IV. were busy. They were giving out commissions, making of acts for abjuration of the King and his line, and for the old engagement, and conferring with the city to get money. The general also desired to hear conference between some of the Rump and some of the secluded members, concerning the justice of their seclusion, and of the hurt that could follow from their readmission : and it was granted, after long conference. The general finding the Rump's pretences unreasonable and ambitious, declared himself with the city for a free Parliament, and came to Westminster with the secluded members, (whom he had appointed to meet and stay for him at Whitehall), and replaced them in the House amongst the Rumpers ; so that now the same cattle that were in the House of Commons in 1640, except those that were dead and those that went from them to the late King at Oxford, are all there again.

B. But this, methinks, was no good service to the King, unless they had learned better principles.

A. They had learned nothing. The major part was now again Presbyterian. It is true they were so grateful to General Monk as to make him general of all the forces in the three nations. They did well also to make void the engagement ; but it was because those acts were made to the prejudice of their party ; but recalled none of their own rebellious ordinances, nor did anything in order to the good of the present King ; but on the contrary, they declared by a vote, that the late King began the war against his two Houses.

B. The two Houses considered as two persons, were they not two of the King's subjects ? If a king raise an army against his subject, is it lawful

for that subject to resist with force, when, as in this case, he might have had peace upon his submission?

A. They knew they had acted vilely and sottishly; but because they had always pretended to greater than ordinary wisdom and godliness, they were loath to confess it. The Presbyterians now saw their time to make a Confession of their Faith, and presented it to the House of Commons to show they had not changed their principles; which, after six readings in the House, was voted to be printed, and once a year to be read publicly in every church.

B. I say again, this re-establishing of the Long Parliament was no good service to the King.

A. Have a little patience. They were re-established with two conditions; one to determine their sitting before the end of March; another to send out writs before their rising for new elections.

B. That qualifies.

A. That brought in the King: for few of this Long Parliament, the country having felt the smart of their former service, could get themselves chosen again. This New Parliament began to sit April the 25th 1660. How soon these called in the King; with what joy and triumph he was received; how earnestly his Majesty pressed the Parliament for the act of oblivion, and how few were excepted out of it; you know as well as I.

B. But I have not yet observed in the Presbyterians any oblivion of their former principles. We are but returned to the state we were in at the beginning of the sedition.

A. Not so: for before that time, though the Kings of England had the right of the militia in virtue of the sovereignty, and without dispute, and without any particular act of Parliament directly to that

PART IV.

purpose; yet now, after this bloody dispute, the next, which is the present, Parliament, in proper and express terms hath declared the same to be the right of the King only, without either of his Houses of Parliament; which act is more instructive to the people, than any arguments drawn from the title of sovereign, and consequently fitter to disarm the ambition of all seditious haranguers for the time to come.

B. I pray God it prove so. Howsoever, I must confess that this Parliament has done all that a Parliament can do for the security of our peace: which I think also would be enough, if preachers would take heed of instilling evil principles into their auditory. I have seen in this revolution a circular motion of the sovereign power through two usurpers, from the late King to this his son. For (leaving out the power of the council of officers, which was but temporary, and no otherwise owned by them but in trust) it moved from King Charles I to the Long Parliament; from thence to the Rump; from the Rump to Oliver Cromwell; and then back again from Richard Cromwell to the Rump; thence to the Long Parliament; and thence to King Charles II, where long may it remain.

A. Amen. And may he have as often as there shall be need such a general.

B. You have told me little of the general till now in the end: but truly, I think the bringing of his little army entirely out of Scotland up to London, was the greatest stratagem that is extant in history.

THE

ART OF RHETORIC.

Di, majorum umbris tenuem, et sine pondere terram,
Spirantesque crocos, et in urna perpetuum ver,
Qui præceptorem sancti voluere parentis
Esse loco.

JUVENAL, VII. 207-210.

[The following is the Preface prefixed, in the 8vo. edition of 1681, to this piece and the Discourse of the Laws of England.]

TO THE READER.

ALTHOUGH these pieces may appear fully to express their own real intrinsic value, as bearing the image and inscription of that great man Mr. Hobbes; yet since common usage has rendered a preface to a book as necessary as a porch to a church, and that in all things some ceremonies cannot be avoided, mode and custom in this point is dutifully to be obeyed.

That they are genuine, credible testimony might be produced, did not the peculiar fineness of thought and expression, and a constant undaunted resolution of maintaining his own opinions, sufficiently ascertain their author. Besides which, they are now published from his own true copies; an advantage which some of his works have wanted.

The first of them, being an abridgment containing the most useful part of Aristotle's rhetoric, was written some thirty years since. Mr. Hobbes in his book of *Human Nature* had already described man, with an exactness almost equal to the original draught of nature; and in his *Elements of Law* laid down the constitution of government, and shown by what armed reason it is maintained: and having demonstrated in the state of nature the primitive art of fighting to be the only medium whereby men procured their ends, did in this design to show what power in societies has succeeded to reign in its stead, I mean the art of speaking; which by use of common places of probability, and knowledge in the manners and passions of mankind, through the working of belief is able to bring about whatsoever interest.

How necessary this art is to that of politic, is clearly evident from that mighty force whereby the eloquence of the ancient orators captivated the minds of the people. Mr. Hobbes chose to recommend by his translation the rhetoric of Aristotle, as being the most accomplished work on that subject which the world has yet seen; having been admired in all ages, and in particular highly approved by the father of the Roman eloquence, a very competent judge. To this he thought fit to add some small matter relating to that part which concerns tropes and figures; as also a short discovery of some little tricks of false and deceitful reasoning.

The other piece is a discourse concerning the laws of England, and has been finished many years. Herein he has endeavoured to accommodate the general notions of his politic to the particular constitution of the English monarchy: a design of no small difficulty; wherein to have succeeded deserves much honour; to have perchance miscarried, deserves easy pardon. It has had the good fortune to be much esteemed by the greatest men of the profession of the law, and therefore may be presumed to contain somewhat excellent. However it is not to be expected that all men should submit to his opinions, yet it is hoped none will be offended at the present publishing of these papers; since they will not find here any new fantastic notions, but only such things as have been already asserted with strength of argument by himself and other persons of eminent learning. To the public at least this benefit may accrue, that some able pen may undertake the controversy, being moved with the desire of that reputation which will necessarily attend victory over so considerable an adversary.

THE

WHOLE ART OF RHETORIC.

BOOK I.

CHAPTER I.

THAT RHETORIC IS AN ART CONSISTING NOT ONLY IN MOVING THE PASSIONS OF THE JUDGE, BUT CHIEFLY IN PROOFS: AND THAT THIS ART IS PROFITABLE.

WE see that all men naturally are able in some sort to *accuse* and *excuse*: some by chance; but some by method. This method may be discovered; and to discover method is all one with teaching an art. If this art consisted in criminations only, and the skill to stir up the judge's anger, envy, fear, pity, or other affections; a rhetorician in well ordered commonwealths and states, where it is forbidden to digress from the cause in hearing, could have nothing at all to say. For all these perversions of the judge are beside the question. And that which the pleader is to shew, and the judge to give sentence on, is this only: *It is so*, or *not so*. The rest hath been decided already by the law-maker; who judging of universals and future things, could not be corrupted. Besides, it is an absurd thing for a man to make crooked the ruler he means to use.

It consisteth therefore chiefly in proofs, which are inferences: and all inferences being *syllogisms*,

BOOK I. 1. a *logician*, if he would observe the difference between a plain syllogism and an enthymeme, which is a rhetorical syllogism, would make the best *rhetorician*. For all syllogisms and inferences belong properly to logic, whether they infer truth or probability. And because without this art it would often come to pass that evil men, by the advantage of natural abilities, would carry an evil cause against a good; it brings with it at least this profit, that making the pleaders even in skill, it leaves the odds only in the merit of the cause. Besides, ordinarily those that are judges, are neither patient, nor capable of long scientifical proofs drawn from the principles through many syllogisms; and therefore had need to be instructed by the rhetorical and shorter way. Lastly, it were ridiculous to be ashamed of being vanquished in exercises of the body, and not to be ashamed of being inferior in the virtue of well expressing the mind.

CHAPTER II.

THE DEFINITION OF RHETORIC.

RHETORIC is that faculty, by which we understand what will serve our turn concerning any subject to win belief in the hearer.

Of those things that beget belief, some require not the help of art, as witnesses, evidences, and the like, which we invent not, but make use of; and some require art, and are invented by us.

The belief that proceeds from our invention, comes partly from the behaviour of the speaker,

partly from the passions of the hearer; but especially from the proofs of what we allege.

Proofs are, in rhetoric, either *examples* or *enthymemes;* as in logic, *inductions* or *syllogisms.* For an example is a short induction, and an enthymeme a short syllogism; out of which are left, as superfluous, that which is supposed to be necessarily understood by the hearer; to avoid prolixity, and not to consume the time of public business needlessly.

CHAPTER III.

OF THE SEVERAL KINDS OF ORATIONS: AND OF THE PRINCIPLES OF RHETORIC.

In all orations, the hearer does either hear only, or judge also.

If he hear only, that is one kind of oration, and is called *demonstrative.*

If he judge, he must judge either of that which is to come, or of that which is past.

If of that which is to come, there is another kind of oration, and is called *deliberative.*

If of that which is past, then it is a third kind of oration, called *judicial.*

So there are three kinds of orations; *demonstrative, judicial,* and *deliberative.*

To which belong their proper times. To the demonstrative, the *present;* to the judicial, the *past;* and to the deliberative, the *time to come.*

And their proper offices. To the deliberative, *exhortation* and *dehortation.* To the judicial, *accusation* and *defence.* And to the demonstrative, *praising* and *dispraising.*

BOOK I. 3.

And their proper ends. To the deliberative, to prove a thing *profitable* or *unprofitable*. To the judicial, *just* or *unjust*. To the demonstrative, *honourable* or *dishonourable*.

The principles of rhetoric out of which *enthymemes* are to be drawn, are the *common opinions* that men have concerning *profitable* and *unprofitable; just* and *unjust; honourable* and *dishonourable;* which are the points in the several kinds of orations questionable. For as in *logic*, where certain and infallible knowledge is the scope of our proof, the principles must be all *infallible truths:* so in *rhetoric* the principles must be *common opinions*, such as the judge is already possessed with. Because the end of rhetoric is victory; which consists in having gotten *belief*.

And because nothing is profitable, unprofitable, just, unjust, honourable or dishonourable, but what has been *done*, or *is to be done;* and nothing is *to be done*, that is not *possible;* and because there be degrees of profitable, unprofitable, just, unjust, honourable and dishonourable; an orator must be ready in other principles, namely, of what is *done* and *not done*, *possible* and *not possible*, *to come* and *not to come*, and what is *greater* and what is *lesser*, both in general, and particularly applied to the thing in question; as what is *more* and *less*, generally; and what is *more profitable* and *less profitable*, &c. particularly.

CHAPTER IV.

OF THE SUBJECT OF DELIBERATIVES; AND THE ABILITIES THAT ARE REQUIRED OF HIM THAT WILL DELIBERATE OF BUSINESS OF STATE.

In *deliberatives* there are to be considered the *subject* wherein, and the *ends* whereto, the orator exhorteth, or from which he dehorteth.

The *subject* is always something in our own power, the knowledge whereof belongs not to rhetoric, but for the most part to the politics; and may be referred in a manner to these five heads.

1. *Of levying of money.* To which point he that will speak as he ought to do, ought to know beforehand the revenue of the state, how much it is, and wherein it consisteth, and also how great are the necessary charges and expenses of the same. This knowledge is gotten partly by a man's own experience, partly by relations and accounts in writing.

2. *Of peace and war.* Concerning which the counsellor or deliberator ought to know the strength of the commonwealth, how much it both now is, and hereafter may be, and wherein that power consisteth. Which knowledge is gotten, partly by experience and relations at home, and partly by the sight of wars and of their events abroad.

3. *Of the safeguard of the country.* Wherein he only is able to give counsel, that knows the forms, and number, and places of the garrisons.

4. *Of provision.* Wherein to speak well, it is necessary for a man to know what is sufficient to maintain the state, what commodities they have at

BOOK I. 4. home growing, what they must fetch in through need, and what they may carry out through abundance.

5. *Of making laws.* To which is necessary so much political or civil philosophy, as to know what are the several kinds of governments, and by what means, either from without or from within, each of those kinds is preserved or destroyed. And this knowledge is gotten, partly by observing the several governments in times past by history, and partly by observing the government of the times present in several nations, by travel.

So that to him that will speak in a council of state, there is necessary this; history, sight of wars, travel, knowledge of the revenue, expenses, forces, havens, garrisons, wares, and provisions in the state he lives in, and what is needful for that state either to export or import.

CHAPTER V.

OF THE ENDS WHICH THE ORATOR IN DELIBERATIVES PROPOUNDETH, WHEREBY TO EXHORT OR DEHORT.

AN orator, in *exhorting*, always propoundeth *felicity*, or some *part* of *felicity*, to be attained by the actions he exhorteth unto: and in *dehortation*, the contrary.

By *felicity* is meant commonly prosperity with virtue, or a continual content of the life with surety.

And the *parts* of it are such things as we call good in *body*, *mind*, or fortune; such as these that follow.

1. *Nobility*, which to a state or nation is to have been ancient inhabitants; and to have had most anciently, and in most number, famous generals in the wars, or men famous for such things as fall under emulation. And to a private man, to have been descended lawfully of a family, which hath yielded most anciently, and in most number, men known to the world for virtue, riches, or any thing in general estimation.

2. *Many and good children.* Which is also *public* and *private*. *Public*, when there is much youth in the state endued with virtue; namely, of the *body*, stature, beauty, strength, and dexterity; of the *mind*, valour and temperance: *private*, when a man hath many such children, both male and female. The virtues commonly respected in women, are of the *body*, beauty and stature; of the *mind*, temperance and housewifery without sordidness.

3. *Riches.* Which is money, cattle, lands, household-stuff, with the power to dispose of them.

4. *Glory.* Which is the reputation of virtue, or of the possession of such things as all, or most men, or wise men desire.

5. *Honour.* Which is the glory of benefiting, or being able to benefit others. *To benefit others*, is to contribute somewhat, not easily had, to another man's safety or riches. The parts of *honour* are sacrifices, monuments, rewards, dedication of places, precedence, sepulchres, statues, public pensions, adorations, presents.

6. *Health.* Which is the being free from diseases, with strength to use the body.

7. *Beauty.* Which is to different ages different. To youth, strength of body and sweetness of aspect.

BOOK I. 5. To full men, strength of body fit for the wars, and countenance sweet with a mixture of terror. To old men, strength enough for necessary labours, with a countenance not displeasing.

8. *Strength.* Which is the ability to move any thing at pleasure of the mover. To move, is to pull, to put off, to lift, to thrust down, to press together.

9. *Stature.* Which is then *just*, when a man in height, breadth, and thickness of body doth so exceed the most, as nevertheless it be no hindrance to the quickness of his motion.

10. *Good old age.* Which is that which comes late, and with the least trouble.

11. *Many and good friends.* Which is to have many that will do for his sake that which they think will be for his good.

12. *Prosperity.* Which is to have all, or the most, or the greatest of those goods which we attribute to fortune.

13. *Virtue.* Which is then to be defined, when we speak of *praise*.

These are the grounds from whence we *exhort*. *Dehortation* is from the contraries of these.

CHAPTER VI.

OF THE COLOURS OR COMMON OPINIONS CONCERNING GOOD AND EVIL.

In *deliberatives*, the principles or elements from whence we draw our proofs, are common opinions concerning good and evil. And these principles are either *absolute* or *comparative*. And those that are *absolute*, are either *disputable* or *indisputable*.

The *indisputable principles* are such as these: *Good*, is that which we love for itself. And that for which we love somewhat else. And that which all things desire. And that to every man which his reason dictates. And that which when we have, we are well or satisfied. And that which satisfies. And the cause or effect of any of these. And that which preserves any of these. And that which keeps off or destroys the contrary of any of these.

Also to take the *good* and reject the *evil*, is *good*. And to take the greater *good*, rather than the less; and the lesser *evil* rather than the greater. Further, all virtues are *good*. And pleasure. And all things beautiful. And justice, valour, temperance, magnanimity, magnificence, and other like habits. And health, beauty, strength, &c. And riches. And friends. And honour and glory. And ability to say or do: also towardliness, will, and the like. And whatsoever art or science. And life. And whatsoever is just.

The *disputable principles* are such as follow:

That is *good*, whose contrary is *evil*. And whose contrary is *good* for our enemies. And whose contrary our enemies are glad of. And of which there cannot be too much. And upon which much labour and cost hath been bestowed. And that which many desire. And that which is praised. And that which even our enemies and evil men praise. And what good we prefer. And what we do advise. And that which is possible, is *good* to undertake. And that which is easy. And that which depends on our own will. And that which is proper for us to do. And what no man else can do. And what-

BOOK I. 6. soever is extraordinary. And what is suitable. And that which wants a little of being at an end. And what we hope to master. And what we are fit for. And what evil men do not. And what we love to do.

CHAPTER VII.

OF THE COLOURS OR COMMON OPINIONS CONCERNING GOOD AND EVIL, COMPARATIVELY.

THE *colours* of *good comparatively* depend, partly, upon the following definitions of *comparatives.*

1. *More,* is *so much and somewhat besides.*

2. *Less,* is *that, which and somewhat else is so much.*

3. *Greater* and *more in number* are said only *comparatively* to *less* and *fewer in number.*

4. *Great* and *little, many* and *few,* are taken *comparatively* to the *most of the same kind.* So that *great* and *many,* is that which *exceeds; little* and *few,* is that which is *exceeded by, the most of the same kind.*

Partly, from the precedent definitions of *good absolutely.*

Common opinions concerning *good comparatively,* then are these.

Greater good is many than fewer, or one of those many.

And *greater* is the kind, in which the greatest is greater than the greatest of another kind. And *greater* is that good than another good, whose kind is *greater* than another's kind. And *greater* is that from which another good follows, than the good which follows. And of two which exceed a

third, *greater* is that which exceeds it most. And that which *causes* the greater good. And that which *proceeds from* a greater good. And *greater* is that which is chosen for itself, than that which is chosen for somewhat else. And the *end* greater than that which is *not* the end. And that which *less* needs other things, than that which *more*. And that which is *independent*, than that which is *dependent* of another. And the *beginning*, than *not* the beginning.

(Seeing the *beginning* is a greater good or evil, than that which is *not* the beginning; and the *end*, than that which is *not* the end; one may argue from this *colour* both ways: as Leodamas against Chabrias, would have the actor more to blame than the adviser; and against Callistratus, the adviser more than the actor.)

And the *cause*, than *not* the cause. And that which hath a *greater* beginning or cause. And the beginning or cause of a *greater good or evil*. And that which is *scarce*, greater than that which is *plentiful*; because harder to get. And that which is *plentiful*, than that which is *scarce*; because oftener in use. And that which is *easy*, than that which is *hard*. And that whose *contrary* is greater. And that whose *want* is greater. And *virtue* than *not* virtue, a greater good. *Vice* than *not* vice, a greater evil. And greater good or evil is that, the *effects* whereof are more *honourable* or more *shameful*. And the *effects* of greater virtues or vices. And the excess whereof is more tolerable, a greater good. And those things which may with more honour be desired. And the desire of better things. And those things whereof the know-

BOOK I. 7. ledge is better. And the knowledge of better things. And that which wise men prefer. And that which is in better men. And that which better men choose. And that which is more, than that which is less *delightful.* And that which is more, than that which is less *honourable.* And that which we would have for ourselves and friends, a greater good; and the contrary, a greater evil. And that which is *lasting,* than that which is *not* lasting. And that which is *firm,* than that which is *not* firm. And what *many* desire, than what *few.* And what the adversary or judge confesseth to be greater, is greater. And *common* than *not* common. And *not* common than *common.* And what is more laudable. And that which is more honoured, a greater good. And that which is more punished, a greater evil. And both good and evil divided than undivided, *appear* greater. And compounded than simple, *appear* greater. And that which is done with opportunity, age, place, time, means disadvantageous, greater than otherwise. And that which is *natural,* than that which is *attained unto.* And the same part of that which is great, than of that which is less. And that which is nearest to the end designed. And that which is good or evil to *one's self,* than that which is *simply* so. And *possible,* than *not* possible. And that which comes toward the end of our life. And that which we do *really,* than that which we do *for show.* And that which we would *be,* rather than what we would *seem* to be. And that which is good *for more purposes,* is the greater good. And that which serves us in great necessity. And that which is joined with less trouble. And that which is joined with more delight. And of the two,

that which added to a third makes the whole the greater. And that which having, we are more sensible of. And in every thing, that which we most esteem.

CHAPTER VIII.

OF THE SEVERAL KINDS OF GOVERNMENTS.

BECAUSE *hortation* and *dehortation* concern the commonwealth, and are drawn from the elements of good and evil; as we have spoken of them already in the *abstract*, so we must speak of them also in the *concrete*, that is, of what is good or evil to each sort of commonwealth in special.

The government of a commonwealth is either *democracy*, or *aristocracy*, or *oligarchy*, or *monarchy*.

Democracy is that, wherein all men with equal right are preferred to the highest magistracy by lot.

Aristŏcracy is that, wherein the highest magistrate is chosen out of those that have had the best education, according to what the laws prescribe for best.

Oligarchy is that, where the highest magistrate is chosen for wealth.

Monarchy is that, wherein one man hath the government of all; which government, if he limit it by law, is called *kingdom*; if by his own will, *tyranny*.

The end of *democracy*, or the people's government, is *liberty*.

The end of *oligarchy*, is *the riches of those that govern*.

BOOK I. 8. The end of *aristocracy*, is *good laws* and *good ordering of the city.*

The end of *monarchy* or *kings*, is *the safety of the people and conservation of his own authority.*

Good therefore in each sort of government, is that which conduceth to these their ends.

And because *belief* is not gotten only by *proofs*, but also from *manners;* the *manners* of each sort of commonwealth ought to be well understood by him that undertaketh to persuade or dissuade in matter of state. Their *manners* may be known by their *designs;* and their *designs* by their *ends;* and their *ends* by what we see them take *pleasure* in. But of this more accurately in the politics.

CHAPTER IX.

OF THE COLOURS OF HONOURABLE AND DISHONOURABLE.

In a demonstrative oration, the subject whereof is *praise* or *dispraise*, the proofs are to be drawn from the elements of *honourable* and *dishonourable.*

In this place we anticipate the second way of getting *belief;* which is from the *manners* of the speaker. For *praise*, whether it come in as the principal business, or upon the by, depends still upon the same *principles;* which are these:

Honourable, is that which we love for itself, and is withal laudable; and that *good*, which pleaseth us only because it is good; and virtue.

Virtue is the faculty of getting and preserving that which is good; and the faculty of doing many and great things well.

The kinds of it are these:

1. *Justice,* which is a virtue whereby every man obtains what by law is his.

2. *Fortitude,* which is a virtue by which a man carries himself honourably and according to the laws, in time of danger.

3. *Temperance,* which is a virtue whereby a man governs himself in matter of pleasure according to the law.

4. *Liberality,* which is a virtue by which we benefit others in matter of money.

5. *Magnanimity,* which is a virtue by which a man is apt to do great benefits.

6. *Magnificence,* which is a virtue by which a man is apt to be at great cost.

7. *Prudence,* which is an *intellectual* virtue, by which a man is able to deliberate well concerning any good leading to felicity.

And *honourable* are the causes and effects of things honourable. And the works of virtue. And the signs of virtue. And those actions the reward whereof is *honour*. And the reward whereof is rather *honour* than *money*. And that which we do not for our sakes. And what we do for our country's good, neglecting our own. And those things are *honourable* which, good of themselves, are not so to the owner. And those things which happen to the dead, rather than to the living. And what we do for other men, especially for benefactors. And bestowing of benefits. And the contrary of those things we are ashamed of. And those things which men strive for earnestly, but without fear of adversary.

And of the more *honourable* and better men, the virtues are more *honourable*. And more *honour-*

BOOK I. 9.

able are the virtues that tend to other men's benefit, than those which tend to one's own.

And *honourable* are those things which are just. And revenge is *honourable*. And victory. And honour. And monuments. And those things which happen not to the living. And things that excel. And what none can do but we. And possessions we reap no profit by. And those things which are *had in honour*, particularly in several places. And the signs of praise. And to have nothing of the servile, mercenary, or mechanic.

And that which *seems* honourable; namely, such as follow: Vices confining upon virtue. And the extremes of virtues. And what the auditors *think* honourable. And that which is in estimation. And that which is done according to custom.

Besides, in a *demonstrative* oration, the orator must show that he whom he praiseth, did what he praiseth unconstrainedly and willingly. And he does so, who does the same often.

Praise is speech, declaring the magnitude of a virtue, action, or work. But to praise the work from the virtue of the worker, is a circular proof.

To magnify and *to praise*, differ in themselves as *felicity* and *virtue*. For praise declares a man's *virtue;* and *magnifying* declares his *felicity*.

Praise is a kind of inverted precept. For to say, "*Do it because it is good*," is a precept; but to say, "*He is good because he did it*," is praise. An orator in *praising*, must also use the forms of *amplification;* such as these: He was the first that did it. The only man that did it. The special man that did it. He did it with disadvantage of time. He did it with little help. He was the

cause that the law ordained rewards and honours for such actions.

Further, he that will *praise* a man, must compare him with others, and his actions with the actions of others, especially with such as are renowned.

And *amplification* is more proper to a *demonstrative* oration, than to any other. For here the actions are confessed; and the orator's part is only this, to contribute unto them magnitude and lustre.

CHAPTER X.

OF ACCUSATION AND DEFENCE, WITH THE DEFINITION OF INJURY.

In a *judicial* oration, which consists in *accusation* and *defence*, the thing to be proved is, that *injury* has been done: and the heads from whence the proofs are to be drawn are these three:—

1. The causes that move to injury.
2. The persons apt to do injury.
3. The persons obnoxious or apt to suffer injury.

An injury is a voluntary offending of another man contrary to the law.

Voluntary is that which a man does with knowledge, and without compulsion.

The causes of *voluntary* actions are intemperance, and a vicious disposition concerning things desirable. As the covetous man does against the law out of an intemperate desire of money.

All actions proceed either from the doer's disposition, or not. Those that proceed not from the

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doer's disposition, are such as he does by *chance*, by *compulsion*, or by *natural necessity*. Those that proceed from the doer's disposition, are such as he does by *custom*, or *upon premeditation*, or in *anger*, or out of *intemperance*.

By chance are said to be done those things, whereof neither the cause nor the scope is evident; and which are done neither orderly, nor always, nor most commonly after the same manner.

By nature are said to be done those things, the causes whereof are in the doer; and are done orderly, and always or for the most part after the same manner.

By compulsion are done those things, which are against the appetite and ordination of the doer.

By custom those actions are said to be done, the cause whereof is this, that the doer has done them often.

Upon premeditation are said to be done those things, which are done for profit, as the end or the way to the end.

In anger are said to be done those things, which are done with a purpose of revenge.

Out of intemperance are said to be done those things, which are delightful.

In sum, every *voluntary* action tends either to *profit* or *pleasure*.

The *colours* of *profitable*, are already set down. The *colours* of that which is *pleasing*, follow next.

CHAPTER XI.

OF THE COLOURS OR COMMON OPINIONS CONCERNING PLEASURE.

Pleasure is a sudden and sensible motion of the soul, towards that which is natural. *Grief* is the contrary.

Pleasant therefore is that, which is the cause of such motion. And to return to one's own nature. And customs. And those things that are not violent.

Unpleasant are those things which proceed from necessity, as cares, study, contentions. The contrary whereof, ease, remission from labour and care, also play, rest, sleep ; are *pleasant.*

Pleasant also is that to which we have an appetite. Also the appetites themselves, if they be sensual ; as thirst, hunger, and lust. Also those things to which we have an appetite upon persuasion and reason. And those things we remember, whether they pleased or displeased then when they were present. And the things we hope for. And anger. And to be in love. And revenge. And victory : therefore also contentious games ; as tables, chess, dice, tennis, &c. ; and hunting ; and suits in law. And honour and reputation amongst men in honour and reputation. And to love. And to be beloved and respected. And to be admired. And to be flattered. And a flatterer : for he seems both to love and admire. And the same thing often. And change or variety. And what we return to afresh. And to learn. And to admire. And to do good. And to receive good. And to help up again one that is fallen. And to finish that which is unper-

BOOK I. 11.

fect. And imitation; and therefore the art of painting; and the art of carving images; and the art of poetry; and pictures and statues. And other men's dangers, so they be near. And to have escaped hardly.

And things of a kind please one another. And every one himself. And one's own pleases him. And to bear sway. And to be thought wise. And to dwell upon that which he is good at. And ridiculous actions, sayings, and persons.

CHAPTER XII.

PRESUMPTIONS OF INJURY DRAWN FROM THE PERSONS THAT DO IT: OR COMMON OPINIONS CONCERNING THE APTITUDE OF PERSONS TO DO INJURY.

Of the *causes* which move to *injury*, namely, *profit and pleasure*, has been already spoken (chap. VI, VII, XI). It follows next, to speak of the *persons* that are apt to do injury.

The *doers of injury* are: such as think they can do it. And such as think to be undiscovered, when they have done it. And such as think, though they be discovered, they shall not be called in question for it. And such as think, though they be called in question for it, that their mulct will be less than their gain, which either themselves or their friends receive by the *injury*.

Able to do injury are: such as are eloquent. And such as are practised in business. And such as have skill in process. And such as have many friends. And rich men. And such as have rich friends, or rich servants, or rich partners.

Undiscovered when they have done it, are . such as are not apt to commit the crimes whereof they are accused : as feeble men, slaughter; poor and not beautiful men, adultery. And such as one would think could not chuse but be discovered. And such as do injuries, whereof there hath been no example. And such as have none or many enemies. And such as can easily conceal what they do. And such as have somebody to transfer the fault upon.

They that do injury *openly* are: such, whose friends have been injured. And such as have the judges for friends. And such as can escape their trial at law. And such as can put off their trial. And such as can corrupt the judges. And such as can avoid the payment of their fine. And such as can defer the payment. And such as cannot pay at all. And such as by the injury get manifestly much, and presently; when the fine is uncertain, little, and to come. And such as get by the injury money, by the penalty shame only. And such on the contrary as get honour by the injury, and suffer the mulct of money only, or banishment, or the like. And such as have often escaped or been undiscovered. And such as have often attempted in vain. And such as consider present pleasure more than pain to come, and so intemperate men are apt to do injury. And such as consider pleasure to come more than present pain, and so temperate men are apt to do injury. And such as may seem to have done it by fortune, nature, necessity, or custom; and by error, rather than by injustice. And such as have means to get pardon. And such as want necessaries, as poor men; or unnecessaries, as rich men. And such as are of very good or very bad reputation.

CHAPTER XIII.

PRESUMPTIONS OF INJURY DRAWN FROM THE PERSONS THAT SUFFER, AND FROM THE MATTER OF THE INJURY.

BOOK I. 13.

Of those that do injury, and why they do it, it hath been already spoken. Now of the *persons* that suffer, and of the *matter* wherein they suffer, the *common opinions* are these.

Persons obnoxious to injury are: such as have the things that we want, either as necessary, or as delightful. And such as are far from us. And such as are at hand. And such as are unwary and credulous. And such as are lazy. And such as are modest. And such as have swallowed many injuries. And such as we have injured often before; and such as never before. And such as are in our danger. And such as are ill-beloved generally. And such as are envied. And our friends; and our enemies. And such as, wanting friends, have no great ability either in speech or action. And such as shall be losers by going to law: as strangers and workmen. And such as have done the injuries they suffer. And such as have committed a crime, or would have done, or are about to do. And such as, by doing them an injury, we shall gratify our friends or superiors. And such whose friendship we have newly left, and accuse. And such as another would do the injury to, if we should not. And such as by injuring, we get greater means of doing good.

The *matters* wherein men are obnoxious to injury are: those things wherein all, or most men use to deal unjustly. And those things which are

easily hid, and put off into other hands, or altered. And those things which a man is ashamed to have suffered. And those things wherein prosecution of injury, may be thought a love of contention.

CHAPTER XIV.

OF THOSE THINGS WHICH ARE NECESSARY TO BE KNOWN FOR THE DEFINITION OF JUST AND UNJUST.

WHEN the fact is evident, the next inquiry is, whether it be *just* or *unjust*. For the definition of *just* and *unjust*, we must know what *law* is; that is, what the *law of nature*, what the *law of nations*, what the *law civil*, what *written law*, and what *unwritten law* is: and what *persons*, that is, what a *public person* or the *city* is, and what a *private person* or *citizen* is.

Unjust, in the opinion of all men, is that which is contrary to the *law of nature*.

Unjust, in the opinion of all men of those nations which traffic and come together, is that which is contrary to the *law common to those nations*.

Unjust, only in one commonwealth, is that which is contrary to the *law civil*, or law of that commonwealth.

He that is accused to have done anything against the *public*, or a *private person*, is accused to do it either *ignorantly*, or *unwillingly*, or *in anger*, or *upon premeditation*.

And because the defendant does many times confess the *fact*, but deny the *unjustice*; as that he *took*, but did not *steal*; and *did*, but not *adultery*; it is necessary to know the definitions of *theft*, *adultery*, and all other crimes.

BOOK I. 14. What facts are contrary to the *written laws*, may be known by the *laws themselves*.

Besides *written laws*, whatsoever is *just* proceeds from *equity* or *goodness*.

From *goodness* proceeds, that which we are praised or honoured for.

From *equity* proceed those actions, which though the written law command not, yet, being interpreted reasonably and supplied, seems to require at our hands.

Actions of *equity* are such as these:—Not too rigorously to punish errors, mischances, or injuries. To pardon the faults that adhere to mankind. And not to consider the *law*, so much as the *law maker's mind*; and not the *words*, so much as the *meaning* of the law. And not to regard so much the fact, as the intention of the doer; nor part of the fact, but the whole; nor what the doer *is*, but what he *has been* always or for the most part. And to remember better the good received, than the ill. And to endure injuries patiently. And to submit rather to the sentence of a judge, than of the sword. And to the sentence of an arbitrator, rather than of a judge.

CHAPTER XV.

OF THE COLOURS OR COMMON OPINIONS CONCERNING INJURIES, COMPARATIVELY.

Common opinions concerning injuries *comparatively*, are such as these.

Greater is the injury, which proceedeth from greater iniquity. And from which proceedeth greater damage. And of which there is no revenge. And for which there is no remedy. And by occasion

of which he that hath received the injury hath done some mischief to himself.

He does greater injury, that does it first, or alone, or with few; and he that does it often.

Greater injury is that, against which laws and penalties were first made. And that, which is more brutal or more approaching to the actions of beasts. And that, which is done upon more premeditation. And by which more laws are broken. And which is done in the place of execution. And which is of greatest shame to him that receives the injury. And which is committed against well deservers. And which is committed against the *unwritten* law; because good men should observe the law for justice, and not for fear of punishment. And which is committed against the *written* law; because he that will do injury, neglecting the penalty set down in the *written* law, is much more likely to transgress the *unwritten* law, where there is no penalty at all.

CHAPTER XVI.

OF PROOFS INARTIFICIAL.

Of *artificial proofs* we have already spoken.

Inartificial proofs, which we invent not, but make use of, are of five sorts.

1. *Laws.* And those are *civil* or *written law:* the *law or custom of nations;* and the *universal law of nature.*

2. *Witnesses.* And those are such as concern *matter*, and such as concern *manners.* Also they be *ancient* or *present.*

3. *Evidences* or writings.

4. *Question* or torture.

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5. *Oaths.* And those be either *given* or *taken*, or both, or neither.

For *laws*, we use them thus: when the *written law* makes against us, we appeal to the *law of nature*, alleging that to be greatest justice, which is greatest equity. That the *law of nature* is immutable, the *written law* mutable. That the *written law* is but seeming justice; the *law of nature* very justice; and justice is among those things which are, and not which seem to be. That the judge ought to discern between true and adulterate justice. That they are better men that obey unwritten than written laws. That the law against us does contradict some other law. And when the law has a double interpretation, that is the true one which makes for us. And that the cause of the law being abolished, the law is no more of validity.

But when the *written law* makes for us, and *equity* for the adversary, we must allege: That a man may use equity, not as a liberty to judge against the law; but only as a security against being forsworn, when he knows not the law. That men seek not equity because it is good simply, but because good for them. That it is the same thing not to make, and not to use the law. That as in other arts, and namely, in physic, fallacies are pernicious; so in a common-wealth it is pernicious to use pretexts against the law. And that in common-wealths well instituted, to seem wiser than the laws is prohibited.

For *witnesses*, we must use them thus. When we have them not, we must stand for *presumptions*, and say: That in equity, sentence ought to be given according to the most probability. That presump-

tions are the testimony of the things themselves, and cannot be bribed. That they cannot lie.

When we have witnesses against him that has them not, we must say: That presumptions, if they be false, cannot be punished. That if presumptions were enough, witnesses were superfluous.

For *writings*, when they favour us, we must say: That *writings* are private and particular laws; and he that takes away the use of evidences, abolisheth the law. That since contracts and negociations pass by *writings*, he that bars their use dissolves human society.

Against them, if they favour the adversary, we may say: That since laws do not bind that are fraudulently made to pass, much less writings; and that the judge being to dispense justice, ought rather to consider what is just than what is in the writing. That writings may be gotten by fraud or force, but justice by neither. That the writing is repugnant to some law, civil or natural; or to justice; or to honesty. That it is repugnant to some other writing, before or after. That it crosses some commodity of the judge; which must not be said directly, but implied cunningly.

For the *torture*, if the giving of it make for us, we must say: That it is the only testimony that is certain. But if it make for the adversary, we may say: That men enforced by torture, speak as well that which is false as that which is true. That they, who can endure, conceal the truth; and they who cannot, say that which is false, to be delivered from pain.

For *oaths*, he that will not put his adversary to his oath, may allege: That he makes no scruple to be forsworn. That by swearing he will carry the

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cause, which, not swearing, he must lose. That he had rather trust his cause in the hands of the judge, than of the adversary.

He that *refuseth* to take the oath may say: That the matter is not worth so much. That if he had been an evil man, he had *sworn*, and carried his cause. That to try it by *swearing*, for a religious man against an irreligious is as hard a match, as to set a weak man against a strong in combat.

He that is *willing* to take the oath, may pretend: That he had rather trust himself, than his adversary; and that it is equal dealing for an irreligious man to *give*, and for a religious man to *take* the oath. That it is his duty to take the oath, since he has required to have *sworn judges*.

He that *offers* the oath, may pretend: That he does piously commit his cause to the Gods. That he makes his adversary himself judge. That it were absurd for him not to swear, that has required the judges to be sworn.

And of these are to be compounded the forms we are to use, when we would *give*, and *not take* the oath; or *take* and *not give*; or *both give* and *take*; or *neither give nor take*.

But if one have sworn contrary to a former oath, he may pretend: That he was forced: that he was deceived; and that neither of these is *perjury*, since *perjury* is voluntary.

But if the adversary do so, he may say: That he that stands not to what he hath *sworn*, subverteth human society. And (turning to the judge): What reason have we to require, that you should be *sworn* that judge our cause; when we will not stand to that we *swear* ourselves?

BOOK II.

CHAPTER I.

THE INTRODUCTION.

Of *belief* proceeding from our *invention*, that part which consisteth in *proof* is already spoken of.

The other two parts follow; whereof one ariseth from the *manners* of the *speaker*, the other from the *passions* of the *hearer*.

The *principles*, *colours*, or *common opinions* upon which a man's belief is grounded concerning the manners of him that speaks, are to be had, partly out of that which hath before been said of *virtue* (Book I. chap. 9); partly out of those things which shall be said by-and-by concerning the *passions*. For a man is *believed*, either for his *prudence* or for his *probity*, which are *virtues*; or for *good will*, of which among the *passions*.

The *principles* concerning belief, arising from the passion of the hearer, are to be gathered from that which shall now be said of the several passions in order.

In every one of which, three things are to be considered.

1. First, *how* men are affected.
2. Secondly, *towards whom*.
3. Thirdly, *for what*.

CHAPTER II.

OF ANGER.

BOOK II. 2.

Anger is desire of revenge, joined with grief, for that he, or some of his, is, or seems to be, *neglected.*

The object of anger is always some particular or individual thing.

In anger there is also pleasure proceeding from the imagination of revenge to come.

To *neglect*, is to esteem little or nothing; and of three kinds: 1 *Contempt*, 2 *Crossing*, 3 *Contumely*.

Contempt, is when a man thinks another of little worth in comparison to himself.

Crossing, is the hinderance of another man's will without design to profit himself.

Contumely, is the disgracing of another for his own pastime.

The *common opinions* concerning anger are therefore such as follow. They are easily angry, that think they are neglected. That think they excel others; as the rich with the poor; the noble with the obscure, &c. And such as think they deserve well. And such as grieve to be hindered, opposed, or not assisted; and therefore sick men, poor men, lovers, and generally all that desire and attain not, are angry with those that, standing by, are not moved by their wants. And such as having expected good, find evil.

Those that men are angry with, are: such as mock, deride, or jest at them. And such as shew any kind of contumely towards them. And such as despise those things which we spend most labour and study upon; and the more, by how much we seem the less advanced therein. And our friends,

rather than those that are not our friends. And such as have honoured us, if they continue not. And such as requite not our courtesy. And such as follow contrary courses, if they be our inferiors. And our friends, if they have said or done us evil, or not good. And such as give not ear to our entreaty. And such as are joyful or calm in our distress. And such as troubling us, are not themselves troubled. And such as willingly hear or see our disgraces. And such as neglect us in the presence of our competitors, of those we admire, of those we would have admire us, of those we reverence, and of those that reverence us. And such as should help us, and neglect it. And such as are in jest, when we are in earnest. And such as forget us, or our names.

An orator therefore must so frame his judge or auditor by his oration, as to make him apt to *anger:* and then make his adversary appear such as men use to be *angry withal.*

CHAPTER III.

OF RECONCILING, OR PACIFYING ANGER.

Reconciliation is the appeasing of anger.

Those to whom men are easily reconciled, are: such as have not offended out of neglect. And such as have done it against their will. And such as wish done the contrary of what they have done. And such as have done as much to themselves. And such as confess and repent. And such as are humbled. And such as do seriously the same things, that they do seriously. And such as have done

BOOK II. 3. them more good heretofore, than now hurt. And such as sue to them for any thing. And such as are not insolent, nor mockers, nor slighters of others in their own disposition. And generally such as are of a contrary disposition to those whom men are usually angry withal. And such as they fear or reverence. And such as reverence them. And such as have offended their anger.

Reconcileable are: such as are contrarily affected to those, whom we have said before to be easily angry. And such as play, laugh, make merry, prosper, live in plenty; and, in sum, all that have no cause of grief. And such as have given their anger time.

Men lay down their anger for these causes. Because they have gotten the victory. Because the offender has suffered more than they meant to inflict. Because they have been revenged of another. Because they think they suffer justly. And because they think the revenge will not be felt, or not known that the revenge was theirs, and for such an injury. And because the offender is dead.

Whosoever therefore would *assuage* the anger of his *auditor*, must make himself appear such as men use to be *reconciled* unto: and beget in his *auditor* such opinions as make him *reconcileable*.

CHAPTER IV.

OF LOVE AND FRIENDS.

To *love* is to will well to another, and that for others, not for our own sake.

A *friend* is he that *loves*, and he that is *beloved*.

Friends one to another, are they that naturally *love* one another.

A *friend* therefore is he; that rejoiceth at another's good. And that grieves at his hurt. And that wishes the same with us to a third, whether good or hurt. And that is *enemy* or *friend* to the same man.

We *love* them: that have done good to us, or ours; especially if much, readily, or in season. That are our friends' *friends*. That are our enemies' *enemies*. That are liberal. That are valiant. That are just. And that we would have love us. And good companions. And such as can abide jests. And such as break jests. And such as praise us, especially for somewhat that we doubt of in ourselves. And such as are neat. And such as upbraid us not with our vices, or with their own benefits. And such as quickly forget injuries. And such as least observe our errors. And such as are not of ill tongue. And those that are ignorant of our vices. And such as cross us not when we are busy or angry. And such as are officious towards us. And those that are like us. And such as follow the same course or trade of life, where they impeach not one another. And such as labour for the same thing, when both may be satisfied. And such as are not ashamed to tell us freely their faults, so it be not in contempt of us, and the faults such as the world, rather than their own consciences, condemns. And such as are ashamed to tell us of their very faults. And such as we would have honour us, and not envy, but imitate us. And such as we would do good to, except with greater hurt to ourselves. And such as continue their friendship to the dead. And

BOOK II. 5. such as speak their mind. And such as are not terrible. And such as we may rely on.

The several *kinds* of *friendship*, are *society, familiarity, consanguinity, affinity &c.*

The things that *beget love*, are, the bestowing of benefits, *gratis; unasked; privately.*

CHAPTER V.

OF ENMITY AND HATRED.

THE *colours* or *common opinions* concerning *hatred*, are to be taken from the *contrary* of those which concern love and friendship.

Hatred differs from anger in this; that anger regards only what is done to oneself; but *hatred* not. And in this, that anger regards particulars only; the other, universals also. And in this, that anger is curable; hatred not. And in this, that anger seeks the vexation, hatred the damage, of one's adversary. That with anger there is always joined grief; with hatred, not always. That anger may at length be satiated; but hatred never.

Hence it appears how the judge or auditor may be made *friend* or *enemy* to us, and how our adversary may be made appear *friend* or *enemy* to the judge; and how we may answer to our adversary, that would make us appear *enemies* to him.

CHAPTER VI.

OF FEAR.

Fear is a trouble or vexation of the mind, arising from the apprehension of an evil at hand, which

may hurt or destroy. *Danger* is the nearness of the evil feared.

The *things* to be feared are: such as have power to hurt. And the signs of will to do us hurt; as anger and hatred of powerful men. And injustice joined with power. And valour provoked, joined with power. And the fear of powerful men.

The *men* that are to be feared, are: such as know our faults. And such as can do us injury. And such as think they are injured by us. And such as have done us injury. And our competitors in such things as cannot satisfy both. And such as are feared by more powerful men than we are. And such as have destroyed greater men than we are. And such as use to invade their inferiors. And men not passionate, but dissemblers and crafty, are more to be feared than those that are hasty and free.

The things *especially* to be feared, are: such, wherein if we err, the error cannot be repaired; at least, not according to ours, but our adversary's pleasure. And such as admit either none, or not easy help. And such as being done, or about to be done to others, make us pity them.

They that *fear not* are: such as expect not evil; or not now; or not this; or not from these. And therefore men fear little in *prosperity*. And men fear little, that think they have suffered already.

An orator therefore that would put *fear* into the auditor, must let him see that he is obnoxious; and that greater than he do suffer and have suffered from those, and at those times, they least thought.

CHAPTER VII.

OF ASSURANCE.

BOOK II. 7.

Assurance is hope, arising from an imagination that the help is near, or the evil afar off.

The things therefore that beget assurance are: the remoteness of those things that are to be feared, and the nearness of their contraries. And the facility of great or many helps or remedies. And neither to have done, nor received injury. And to have no competitors, or not great ones; or if great ones, at least friends, such as we have obliged, or are obliged to. And that the danger is extended to more or greater than us.

Assured or *confident*, are: they that have oft escaped danger. And they, to whom most things have succeeded well. And they, that see their equals or inferiors not afraid. And they, that have wherewith to make themselves feared; as wealth, strength, &c. And such as have done others no wrong. And such as think themselves in good terms with God Almighty. And such as think they will speed well, that are gone before.

CHAPTER VIII.

OF SHAME.

Shame is a perturbation of the mind arising from the apprehension of evil, past, present, or to come, to the prejudice of a man's own, or his friends' reputation.

The things therefore which men are *ashamed of*, are those actions which proceed from vice: as to

throw away one's arms, to run away, signs of cowardliness. To deny that which is committed to one's trust, a sign of injustice. To have lain with whom, where, and when, we ought not, signs of intemperance. To make gain of small and base things; not to help with money whom and how much we ought; to receive help from meaner men; to ask money at use from such as one thinks will borrow of him; to borrow of him that expects payment of somewhat before lent; and to re-demand what one has lent, of him that one thinks will borrow more; and so to praise as one may be thought to ask; signs of wretchedness. To praise one to his face; to praise his virtues too much, and colour his vices; signs of flattery. To be unable to endure such labours as men endure that are elder, tenderer, greater in quality, and of less strength than he; signs of effeminacy. To be beholden often to another; and to upbraid those that are beholden to him; signs of pusillanimity. To speak and promise much of one's self, more than is due; signs of arrogance. To want those things which one's equals, all or most of them, have attained to, is also a thing to be ashamed of. And to suffer things ignominious; as to serve about another's person, or to be employed in his base actions.

In actions of intemperance, whether willingly or unwillingly committed, there is *shame*; in actions of force, only when they are done unwillingly.

The men *before whom* we are ashamed, are such as we respect: namely, those that admire us. And those whom we desire should admire us. And those whom we admire. Those that contend with us for honour. Those whose opinion we contemn

BOOK II. 8. not. And therefore men are most ashamed in the presence: of old and well bred men. Of those we are always to live with. Of those that are not guilty of the same fault. Of those that do not easily pardon. And of those that are apt to reveal our faults; such as are men injured, backbiters, scoffers, comic poets. And of those before whom we have had always good success. And of those who never asked anything of us before. And of such as desire our friendship. And of our familiars, that know none of our crimes. And of such as will reveal our faults to any of those that are named before.

But in the presence of such whose judgment most men despise, men are not ashamed. Therefore we are ashamed also in the presence of those whom we reverence. And of those who are concerned in our own, or ancestors', or kinsfolk's, actions or misfortunes, if they be shameful. And of their rivals. And of those that are to live with them that know their disgrace.

The *common opinions* concerning *impudence*, are taken from the contrary of these.

CHAPTER IX.

OF GRACE OR FAVOUR.

Grace is that virtue, by which a man is said to do a good turn or to do service to a man in need, not for his own, but for his cause to whom he does it.

Great grace is when the need is great; or when they are hard or difficult things that are conferred; or when the time is seasonable; or when he that confers the *favour*, is the only or first man that did it.

Need is a desire, joined with grief, for the absence of the thing desired. *Grace* therefore it is not, if it be done to one that needs not. Whosoever therefore would prove that he has done a *grace* or *favour*, must show that he needeth it to whom it was done.

Grace it is not, which is done by chance. Nor which is done by necessity. Nor which has been requited. Nor that which is done to one's enemy. Nor that which is a trifle. Nor that which is nought, if the giver know the fault.

And in this manner a man may go over the predicaments, and examine a benefit, whether it be a *grace* for being *this*, or for being *so much*, or for being *such*, or for being *now*, &c.

CHAPTER X.

OF PITY OR COMPASSION.

Pity is a perturbation of the mind, arising from the apprehension of hurt or trouble to another that doth not deserve it, and which he thinks may happen to himself or his.

And because it appertains to *pity* to think that he, or his, may fall into the misery he pities in others; it follows that they be *most compassionate:* who have passed through misery. And old men. And weak men. And timorous men. And learned men. And such as have parents, wife and children. And such as think there be honest men.

And that they are *less compassionate:* who are in great despair. Who are in great prosperity. And they that are angry; for they consider not. And they that are very confident; for they also consider not. And they that are in the act of con-

BOOK II. 10. tumely; for neither do these consider. And they that are astonished with fear. And they that think no man honest.

The *things* to be pitied are: such as grieve, and withal hurt. Such as destroy. And calamities of fortune, if they be great: as none or few friends, deformity, weakness, lameness, &c. And evil that arrives where good is expected. And after extreme evil, a little good. And through a man's life to have no good offer itself; or being offered, not to have been able to enjoy it.

Men to be pitied are: such as are known to us, unless they be so near to us, as their hurt be our own. And such as be of our own years. Such as are like us in manners. Such as are of the same, or like stock. And our equals in dignity. Those that have lately suffered, or are shortly to suffer injury: and those that have the marks of injury past. And those that have the words or actions of them that be in present misery.

CHAPTER XI.

OF INDIGNATION.

OPPOSITE in a manner to pity in *good* men, is *indignation;* which is grief for the prosperity of a man unworthy.

With *indignation* there is always joined a joy for the prosperity of a man worthy; as *pity* is always with contentment in the adversity of them that deserve it.

In *wicked* men the opposite of pity is *envy*; as also the companion thereof, *delight in the harm of*

others, which the Greeks in one word have called ἐπιχαιρεκακία. But of these in the next chapter.

Men conceive *indignation* against others, not for their virtues, as justice, &c.; for these make men worthy; and in *indignation* we think men unworthy: but for those goods which men indued with virtue, and noble men, and handsome men are worthy of. And for newly-gotten power and riches, rather than for ancient; and especially if by these he has gotten other goods, as by riches, command. The reason why we conceive greater *indignation* against new than ancient riches, is that the former seem to possess that which is none of theirs, but the ancient seem to have but their own: for with common people, to have been so long, is to be so by right. And for the bestowing of goods incongruously: as when the arms of the most valiant Achilles were bestowed on the most eloquent Ulysses. And for the comparison of the inferior in the same thing, as when one valiant is compared with a more valiant; or whether absolutely superior, as when a good scholar is compared with a good man.

Apt to indignation are: they that think themselves worthy of the greatest goods, and do possess them. And they that are good. And they that are ambitious. And such as think themselves deserve better what another possesseth, than he that hath it.

Least apt to indignation are, such as are of a poor, servile, and not ambitious nature.

Who they are, that rejoice or grieve not at the adversity of him that suffers worthily, and in what occasions, may be gathered from the contrary of what has been already said.

BOOK II. 11. Whoever therefore would turn away the *compassion* of the judge, he must make him apt to *indignation;* and shew that his adversary is unworthy of the good, and worthy of the evil which happens to him.

CHAPTER XII.

OF ENVY.

Envy is grief for the prosperity of such as ourselves, arising not from any hurt that we, but from the good that they receive.

Such as ourselves, I call those that are equal to us in blood, in age, in abilities, in glory, or in means.

They are apt to *envy*: that are within a little of the highest. And those that are extraordinarily honoured for some quality that is singular in them, especially wisdom or good fortune. And such as would be thought wise. And such as catch at glory in every action. And men of poor spirits; for every thing appears great to them.

The *things* which men envy in others are: such as bring glory. And goods of fortune. And such things as we desire for ourselves. And things in the possession whereof we exceed others, or they us, a little.

Obnoxious to *envy* are: men of our own time, of our own country, of our own age, and competitors of our glory; and therefore, those whom we strive with for honour. And those that covet the same things that we do. And those that get quickly, what we hardly obtain, or not at all. And those that attain unto, or do the things that turn to our

reproach, not being done by us. And those that possess what we have possessed heretofore; so old and decayed men envy the young and lusty. And those that have bestowed little, are subject to be envied by such as have bestowed much upon the same thing.

From the contraries of these may be derived the principles concerning joy for other men's hurt.

He therefore that would not have his enemy prevail, when he craves *pity* or other favour, must dispose the judge to *envy;* and make his adversary appear such as are above described to be subject to the *envy* of others.

CHAPTER XIII.

OF EMULATION.

Emulation is grief arising from that our equals possess such goods as are had in honour, and whereof we are capable, but have them not; not because they have them, but because not we also. No man therefore *emulates* another in things whereof himself is not capable.

Apt to *emulate* are: such as esteem themselves worthy of more than they have. And young and magnanimous men. And such as already possess the goods for which men are honoured: for they measure their worth by their having. And those that are esteemed worthy by others. And those whose ancestors, kindred, familiars, nation, city, have been eminent for some good, do *emulate* others for that good.

Objects of emulation are, for *things;* virtues.

BOOK II. 13. And things whereby we may profit others. And things whereby we may please others.

For *persons:* they that possess such things. And such as many desire to be friends or acquainted with, or like unto. And they whose praises fly abroad.

The contrary of *emulation* is *contempt.* And they that *emulate* such as have the goods aforementioned, *contemn* such as have them not. And thence it is, that men who live happily enough, unless they have the goods which men honour, are nevertheless *contemned.*

CHAPTER XIV.

OF THE MANNERS OF YOUTH.

OF *passions* we have already spoken. We are next to speak of *manners.*

Manners are distinguished by *passions, habits, ages,* and *fortunes.*

What kind of *manners* proceed from *passions,* and from *virtues* and *vices,* which are *habits,* hath been already shewed. There remains to be spoken of the *manners* that are peculiar to several *ages* and *fortunes.*

The *ages* are *youth, middle-age, old age.* And first of *youth.*

Young men are: violent in their desires. Prompt to execute their desires. Incontinent. Inconstant, easily forsaking what they desired before. Longing mightily, and soon satisfied. Apt to anger, and in their anger violent; and ready to execute their anger with their hands. Lovers of honour and of victory more than money, as having not been yet in

want. Well-natured, as having not been acquainted with much malice. Full of hope, both because they have not yet been often frustrated, and because they have by natural heat that disposition that other ages have by wine; youth being a kind of natural drunkenness; besides, hope is of the time to come, whereof youth hath much, but of the time past little. Credulous, because not yet often deceived. Easily deceived, because full of hope. Valiant, because apt to anger and full of hope; whereof this begets confidence, the other keeps off fear. Bashful, because they estimate the honour of actions by the precepts of the law. Magnanimous, because not yet dejected by the misfortunes of human life. And lovers of honour more than of profit, because they live more by custom than by reason; and by reason we acquire profit, but virtue by custom. Lovers of their friends and companions. Apt to err in the excess rather than the defect, contrary to that precept of Chilon, *Ne quid nimis;* for they overdo every thing: they love too much and hate too much; because thinking themselves wise, they are obstinate in the opinion they have once delivered. Doers of injury, rather for contumely than for damage. Merciful, because, measuring others by their own innocence, they think them better than they be, and therefore less to merit what they suffer; which is a cause of pity. And lovers of mirth, and by consequence such as love to jest at others.

Jesting is witty contumely.

CHAPTER XV.

OF THE MANNERS OF OLD MEN.

BOOK II. 15. THE manners of *old* men are in a manner the contraries of those of *youth*. They determine nothing. They do everything less vehemently than is fit. They never say, they know; but to everything they say, perhaps and peradventure; which comes to pass from that, having lived long, they have often mistaken and been deceived. They are peevish, because they interpret everything to the worst. And suspicious through incredulity, and incredulous by reason of their experience. They love and hate, as if they meant to continue in neither. Are of poor spirits, as having been humbled by the chances of life. And covetous, as knowing how easy it is to lose, and how hard to get. And timorous, as having been cooled by years. And greedy of life; for good things seem greater by the want of them. And lovers of themselves, out of pusillanimity. And seek profit more than honour, because they love themselves; and profit is among the goods that are not simply good, but good for one's self. And without bashfulness, because they despise seeming. And hope little; knowing by experience that many times good counsel has been followed with ill event; and because also they be timorous. And live by memory rather than hope; for memory is of the time past, whereof old men have good store. And are full of talk, because they delight in their memory. And vehement in their anger, but not stout enough to execute it. They have weak or no desires, and thence seem temperate. They are slaves to gain. And live more by reason than custom; because

reason leads to profit, as custom to that which is honourable. And do injury to endamage, and not in contumely. And are merciful by compassion, or imagination of the same evils in themselves; which is a kind of infirmity, and not humanity, as in *young men*, proceeding from a good opinion of those that suffer evil. And full of complaint, as thinking themselves not far from evil because of their infir mity.

Seeing then every man loves such men and their discourses which are most agreeable to their own manners; it is not hard to collect, how the orator and his oration may be made acceptable to the hearer, whether *young* or *old*.

CHAPTER XVI.

OF THE MANNERS OF MIDDLE-AGED MEN.

THE manners of *middle-aged* men, are between those of *youth* and *old men*. And therefore they neither dare, nor fear too much; but both as is fit. They neither believe all, nor reject all; but judge. They seek not only what is honourable, nor only what is profitable; but both. They are neither covetous, nor prodigal; but in the mean. They are neither easily angry, nor yet stupid; but between both. They are valiant and withal temperate.

And in general, whatsoever is divided in *youth* and *old men*, is compounded in *middle-age*. And whereof the excess or defect is in *youth* or *old men*, the mediocrity is in those of *middle-age*.

Middle-age for the *body*, I call the time from thirty to five and thirty years: for the *mind*, the nine-and-fortieth, or thereabouts.

CHAPTER XVII.

OF THE MANNERS OF THE NOBILITY.

BOOK II. 17. Of manners that proceed from the several *ages* we have already spoken. We are next to speak of those that rise from several *fortunes*.

The manners of the *nobility* are: to be ambitious. To undervalue their ancestors' equals; for the goods of fortune seem the more precious for their antiquity.

Nobility is the virtue of a stock. And *generosity*, is not to degenerate from the virtue of his stock. For as in plants, so in the races of men, there is a certain progress; and they grow better and better to a certain point; and change, *viz.* subtile wits into madness, and staid wits into stupidity and blockishness.

CHAPTER XVIII.

OF THE MANNERS OF THE RICH.

Rich men are contumelious, and proud; this they have from their riches; for seeing everything may be had for money, having money they think they have all that is good. And effeminate; because they have wherewithal to subminister to their lust. And boasters of their wealth, and speak in high terms foolishly; for men willingly talk of what they love and admire, and think others affect the same that they do; and the truth is, all sorts of men submit to the rich. And think themselves worthy to command, having that by which men attain command. And in general they have the manners of

fortunate fools. They do injury, with intention not to hurt, but to disgrace; and partly also through incontinence.

There is a difference between *new* and *ancient* riches. For they that are *newly* come to wealth, have the same faults in a greater degree; for *new riches* are a kind of rudeness and apprenticeship of *riches*.

CHAPTER XIX.

OF THE MANNERS OF MEN IN POWER, AND OF SUCH AS PROSPER.

THE manners of men *in power*, are the same, or better than those of the *rich*. They have a greater sense of honour than the rich, and their manners are more manly. They are more industrious than the rich, for *power* is sustained by industry. They are grave, but without austereness; for being in place conspicuous, they carry themselves the more modestly; and have a kind of gentle and comely gravity, which the *Greeks* call σεμνότης. When they do injuries, they do great ones.

The manners of men that *prosper*, are compounded of the manners of the *nobility*, the *rich*, and those that are *in power*; for to some of these all *prosperity* appertains.

Prosperity in children, and goods of the body, make men desire to exceed others in the goods of fortune.

Men that *prosper* have this ill; to be more proud and inconsiderate than others. And this good; that they worship God, trusting in him, for that they find

BOOK II. 19. themselves to receive more good than proceeds from their industry.

The manners of *poor* men, *obscure* men, men *without power*, and men *in adversity*, may be collected from the contrary of what has been said.

CHAPTER XX

COMMON PLACES OR PRINCIPLES CONCERNING WHAT MAY BE DONE, WHAT HAS BEEN DONE, AND WHAT SHALL BE DONE; OR OF FACT POSSIBLE, PAST AND FUTURE. ALSO OF GREAT AND LITTLE.

WE have hitherto set down such *principles* as are peculiar to several kinds of orations. Now we are to speak of such *places* as are *common* to them all; as these: *possible*, *done*, or *past*, *future*, *great*, *small*.

Possible is that: the contrary whereof is possible. And the like whereof is possible. And than which some harder thing is possible. And the beginning whereof is possible. And the end whereof is possible. And the usual consequent whereof is possible. And whatsoever we desire. And the beginning whereof is in the power of those whom we can either compel or persuade. And part whereof is possible. And part of the whole that is possible. And the general, if a particular. And a particular, if the general. And of relatives, if one, the other. And that which without art and industry is possible, is much more so with art and industry. And that which is possible to worse, weaker, and more unskilful men, is much more so to better, stronger, and more skilful.

The principles concerning *impossible* are the contraries of these.

That *has been done:* than which a harder thing has been done. And the consequent whereof has been done. And that which being possible, he had a will to do, and nothing hindered. And that which was possible to him in his anger. And that which he longed to do. And that which was before upon the point of doing. And whose antecedent has been done; or that for which it uses to be done. And if that for whose cause we do this, then this.

The principles concerning *not done* are the contraries of these.

That *shall be done:* which some man can, and means to do. And which some man can, and desires to do. And which is in the way, and upon the point to be done. And the antecedents whereof are past. And the motive whereof is past.

Of *great* and *small, more* and *less*, see Chapter VII. of Book I.

CHAPTER XXI.

OF EXAMPLE, SIMILITUDE, AND FABLES.

OF the *principles*, both general and special, from whence *proofs* are to be drawn, has been already spoken. Now follow the *proofs* themselves, which are *examples* or *enthymemes*.

An *example*, is either an example *properly so called*, as some action past; or a *similitude*, which also is called a parable; or a *fable*, which contains some action feigned.

BOOK II. 21.

An example, *properly so called,* is this: *Darius came not into Greece till he had first subdued Egypt; Xerxes also conquered Egypt first; then afterwards crossed the Hellespont; we ought therefore to hinder the King of Persia from conquering Egypt.*

A *similitude,* or *parable,* is such as followeth: *They who choose their magistrates by lot, are like them that choose for their champions those on whom the lot shall fall, rather than those who have the greatest strength; and for their pilot, not him that hath skill, but him whose name is drawn out of the urn.*

A *fable* is in this manner: *The horse desiring to drive out the stag from his common pasture, took a man to assist him; and having received into his mouth a bridle, and a rider upon his back, obtained his intent, but became subject to the man. So you of Himera, having, in hope to be revenged of your enemies, given unto Phalaris sovereign authority, that is to say, taken a bridle into your mouths; if you shall also give him a guard to his person, that is, let him get up upon your backs, you be come his slaves presently, past recovery.*

To find out *examples,* that is, actions done that may serve our purpose, is therefore hard, because not in our power. But to find *fables* and *similitudes,* is easier; because, by conversing in philosophy, a man may feign somewhat in nature like to the case in hand.

Examples, similitudes, and *fables,* where *enthymemes* are wanting, may serve us in the beginning of an oration for inductions; otherwise are to be alleged after enthymemes, for testimonies.

CHAPTER XXII.

OF A SENTENCE.

BOOK II. 22.

A *sentence* is an universal proposition concerning those things which are to be desired or avoided in the actions or passions of the common life. As, *A wise man will not suffer his children to be over-learned.* And is to an *enthymeme* in *rhetoric,* as any proposition is to a *syllogism* in *logic.* And therefore a *sentence,* if the reason be rendered, becomes a *conclusion;* and both together make an *enthymeme.* As for example: *To be over-learned, besides that it begets effeminacy, procures envy. Therefore he that is wise will not suffer his children to be over-learned.*

Of *sentences* there be four sorts. For they either require proofs or not, that is, are manifest or not.

Such as are manifest, are either so as soon as they are uttered; as, *Health is a great good.* Or as soon as they are considered; as, *Men use to hate whom they have hurt.*

Such as are not manifest, are either conclusions of *enthymemes*; as, *He that is wise will not suffer his children, &c.* Or else are *enthymematical;* that is, have in themselves the force of an *enthymeme;* as *Mortal men ought not to carry immortal anger.*

A *sentence* not manifest, ought to be either *inferred* or *confirmed. Inferred* thus: *It is not good to be effeminately minded, nor to be envied by one's fellow-citizens. A wise man, therefore, will not have his children over-learned. Confirmed* thus: *A wise man will not have his children*

BOOK II. 22.

over-learned; seeing too much learning both softens a man's mind, and procures him envy among his fellow-citizens.

If a reason be added to a manifest *sentence,* let it be short.

Sentences become not every man; but only old men, and such as be well-versed in business. For to hear a young man speak sentences, is ridiculous; and to hear an ignorant man speak sentences, is absurd.

Sentences generally received, when they are for our purpose, ought not to be neglected; because they pass for truths. And yet they may be denied, when any laudable custom or humour may thereby be made appear in the denier.

The commodities of *sentences,* are two. One proceeding from the vanity of the hearer, who takes for true universally affirmed, that which he has found for true only in some particular; and therefore a man ought to consider in every thing what opinion the hearer holds. Another is, that sentences do discover the manners and disposition of the speaker; so that if they be esteemed good sentences, he shall be esteemed a good man; and if evil, an evil man.

Thus much of *sentences,* what they be; of how many sorts; how to be used; whom they become; and what is their profit.

CHAPTER XXIII.

OF THE INVENTION OF ENTHYMEMES.

SEEING an enthymeme differs from a logical syllogism, in that it neither concludes out of every thing, nor out of remote principles; the *places* of it, from

whence a man may argue, ought to be certain and determinate.

And because whosoever makes a *syllogism*, rhetorical or other, should know all or the most part of that which is in question; as, whosoever is to advise the Athenians in the question, whether they are to make war or no, must know what their revenues be, what and what kind of power they have: and he that will praise them, must know their acts at Salamis, Marathon, &c.: it will be necessary for a good speaker to have in readiness the choicest particulars of whatsoever he foresees he may speak of.

He that is to speak *ex tempore*, must comprehend in his speech as much as he can of what is most *proper* in the matter in hand.

Proper, I call those things which are least common to others: as, he that will praise Achilles, is not to declare such things as are common both to him and Diomedes; as that he was a prince, and warred against the Trojans: but such things as are proper only to Achilles; as that he killed Hector and Cygnus; went to the war young and voluntary.

Let this therefore be one general *place; from that which is proper.*

CHAPTER XXIV.

OF THE PLACES OF ENTHYMEMES OSTENSIVE.

FORASMUCH as enthymemes either infer truly, or seem only so to do; and they which do infer indeed, be either *ostensive*, or such as bring a man to some *impossibility;* we will first set down the places of enthymemes *ostensive.*

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An *ostensive* enthymeme is, wherein a man concludes the question from somewhat granted.

That enthymeme which brings a man to an *impossibility*, is an enthymeme wherein from that which the adversary maintaineth, we conclude that which is manifestly *impossible*.

All *places* have been already set down in a manner in the precedent propositions of *good, evil, just, unjust, honourable,* and *dishonourable :* namely, they have been set down as applied to *particular* subjects, or in *concrete*. Here they are to be set down in another manner; namely in the *abstract* or *universal*.

The first *place*, then, let be from *contraries;* which in the *concrete* or particulars is exemplified thus. *If intemperance be hurtful, temperance is profitable : and if intemperance be not hurtful, neither is temperance profitable.*

Another *place* may be from *cognomination*, or affinity of words : as in this particular. *If what is just, be good ; then what is justly, is well : but justly to die, is not well : therefore not all that is just, is good.*

A third from *relatives ;* as, *This man has justly done, therefore the other has justly suffered.* But this *place* sometimes deceives; for a man may suffer *justly*, yet not from *him*.

A fourth from *comparison*, three ways.

From the *great to the less ; as, He has stricken his father ; and therefore this man.*

From the *less to the greater:* as, *The Gods know not all things ; much less man.*

From *equality:* as, *If captains be not always the worse esteemed for losing a victory ; why should sophisters ?*

Another from the time: as Philip to the Thebans: *If I had required to pass through your country with my army, before I had aided you against the Phocæans, there is no doubt but you would have promised it me. It is absurd therefore to deny it me now, after I have trusted you.*

A sixth from *what the adversary says of himself:* as, *Iphicrates asked Aristophon, whether he would take a bribe to betray the army; and he answering no; What, says he, is it likely that Iphicrates would betray the army, and Aristophon not?*

This *place* would be ridiculous, where the *defendant* were not in much more estimation than the *accuser*.

A seventh from the *definition;* as that of Socrates; *A spirit is either God, or the creature of God; and therefore he denies not that there is a God, that confesses there are spirits.*

An eighth from the *distinction of an ambiguous word.*

A ninth from *division:* as, *If all men do what they do for one of three causes, whereof two are impossible; and the accuser charge not the defendant with the third; it follows that he has not done it.*

A tenth from *induction:* as, *At Athens, at Thebes, at Sparta, &c.; and therefore every where.*

An eleventh from *authority*, or precedent sentence; as that of Sappho, that *Death is evil; for that the gods have judged it so, in excepting themselves from mortality.*

A twelfth from the *consequence;* as, *It is not*

BOOK II. 24. *good to be envied; therefore neither to be learned. It is good to be wise, therefore also to be instructed.*

A thirteenth from *two contrary consequences;* as, *It is not good to be an orator; because if he speak the truth, he shall displease men, if he speak falsely, he shall displease God.*

Here is to be noted, that sometimes this argument may be retorted: as thus, *If you speak truth, you shall please God; if you speak untruth, you shall please men; therefore by all means be an orator.*

A fourteenth from the *quality that men have to praise one thing and approve another:* as, *We ought not to war against the Athenians upon no precedent injury; for all men discommend injustice.* Again, *We ought to war against the Athenians; for otherwise our liberty is at their mercy, that is, is no liberty: but the preservation of liberty is a thing that all men will approve.*

A fifteenth from *proportion:* as, *Seeing we naturalize strangers for their virtues, why should we not banish this stranger for his vices?*

A sixteenth from *the similitude of consequents:* as *He that denies the immortality of the gods, is no worse than he that has written the generation of the gods: for the same consequence follows of both, that sometimes there are none.*

A seventeenth from that, *that men change their mind:* as, *If when we were in banishment, we fought to recover our country, why should we not fight now to retain it?*

An eighteenth from *a feigned end:* as that *Diomedes chose Ulysses to go with him, not as more valiant than another, but as one that would partake less of the glory.*

A nineteenth from the *cause;* as if he would infer he did it from this, *that he had cause to do it.*

A twentieth from *that which is incredible, but true*: as that *laws may need a law to mend them, as well as fish bred in the salt water may need salting.*

CHAPTER XXV.

OF THE PLACES OF ENTHYMEMES THAT LEAD TO IMPOSSIBILITY.

LET the first place be from inspection of *times, actions,* or *words,* either of the adversary, or of the speaker, or both. Of the adversary: as, *He says he loves the people, and yet he was in the conspiracy of the Thirty.* Of the speaker; as, *He says I am contentious, and yet I never began suit.* Of both; as, *He never conferred any thing to the benefit of the commonwealth; whereas I have ransomed divers citizens with mine own money.*

A second is from *shewing the cause which seemed amiss,* and serves for men of good reputation that are accused; as, The mother that was accused of incest for being seen embracing her son, was absolved as soon as she made appear that she embraced him upon his arrival from far by way of salutation.

A third, from *rendering of the cause;* as, Leodamas, to whom it was objected, that he had, under the thirty tyrants, defaced the inscription, which the people had set up in a pillar, of his ignominy; answered, *He had not done it; because it would have been more to his commodity to let it stand;*

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thereby to endear himself to the tyrants by the testimony of the people's hatred.

A fourth from *better counsel;* as *He might have done better for himself, therefore he did not this.* But this place deceives, when the *better counsel* comes to mind after the fact.

A fifth from *the incompatibility of the things to be done;* as, They that did deliberate whether they should both mourn and sacrifice at the funeral of Leucothea, were told that, *if they thought her a goddess, they ought not to mourn; and if they thought her a mortal, they ought not to sacrifice.*

A sixth (which is proper to judicial orations) from an *inference of error;* as, *If he did it not, he was not wise; therefore he did it.*

Enthymemes that lead to *impossibility,* please more than *ostensive.* For they compare and put contraries together, whereby they are the better set off and more conspicuous to the auditor.

Of all enthymemes, they be best which we assent to as soon as hear. For such consent pleaseth us, and makes us favourable to the speaker.

CHAPTER XXVI.

OF THE PLACES OF SEEMING ENTHYMEMES.

Of *seeming* enthymemes, one place may be from *the form of speaking.* As when a man has repeated divers sentences, he brings in his conclusion as if it followed necessarily, though it do not.

A second from *an ambiguous word.*

A third from that which is *true, divided,* to that which is *false, joined;* as that of Orestes, *It was justice that I should revenge my father's death,*

and it was justice my mother should die for killing my father: therefore I justly killed my mother. Or from that which is *true, joined,* to that which is *false, divided*; as, *one cup of wine, and one cup of wine, are hurtful; therefore one cup of wine is hurtful.*

A fourth, from *amplification of the crime.* For neither is the *defendant* likely to have committed the crime he *amplifies;* nor does the *accuser* seem, when he is passionate, to want ground for his accusation.

A fifth from *signs;* as, when a man concludes the doing of the fact from the manner of his life.

A sixth from *that which comes by chance.* As if from this, that the tyranny of Hipparchus came to be overthrown from the love of Aristogeiton to Harmodius, a man should conclude that in a free commonwealth loving of boys were profitable.

A seventh from the *consequence;* as, *Banishment is to be desired, because a banished man has choice of places to dwell in.*

An eighth from *making that the cause which is not;* as, *In Demosthenes' government the war began; therefore Demosthenes governed well. With the Peloponnesian war began the plague, therefore Pericles, that persuaded that war, did ill.*

A ninth from *the omission of some circumstance;* as, *Helen did what was lawful when she ran away with Paris, because she had her father's consent to choose her own husband;* which was true only during the time that she had not chosen.

A tenth from that which is *probable,* in *some case,* to that which is *probable simply;* as, *It is probable he foresaw that if he did it he should be*

BOOK II. 26. *suspected; therefore it is probable he did it not.* From this place one may infer both ways that *he did it not.* For if he be not likely to do it, it may be thought *he did it not:* again, if he were likely to do it, it may be thought *he did it not,* for this, *that he knew he should be suspected.*

Upon this place was grounded the art which was so much detested in Protagoras, of making the better cause seem the worse, and the worse the better.

CHAPTER XXVII.

OF THE WAYS TO ANSWER THE ARGUMENTS OF THE ADVERSARY.

AN *argument* is answered by an *opposite syllogism,* or by an *objection.*

The places of *opposite syllogisms* are the same with the places of syllogisms, or enthymemes; for a rhetorical syllogism is an enthymeme.

The places of *objections* are four.

First, from *the same.* As, to the adversary that proves love to be good by an enthymeme, may be *objected,* that, *No want is good, and yet love is want;* or particularly thus, *The love of Myrrha to her father was not good.*

The second from *contraries.* As, if the adversary say, *A good man does good to his friends,* an *objection* might be made, that then *an evil man will do also evil to his friends.*

The third from *similitude.* As thus, if the adversary say, all men that are injured do hate those that have injured them, it may be *objected,* that then *all men that had received benefits should love their benefactors,* that is to say, be grateful.

The fourth from the *authority of famous men.* As when a man shall say, that drunken men ought to be pardoned those acts they do in their drunkenness, because they know not what they do; the *objection* may be, that *Pittacus was of another mind, that appointed for such acts a double punishment; one for the act, another for the drunkenness.*

And forasmuch as all enthymemes are drawn from *probability*, or *example*, or from a *sign fallible*, or from a *sign infallible:* an enthymeme from *probability* may be confuted *really*, by showing that for the most part it falls out otherwise; but *apparently* or *sophistically*, by showing only that it does not fall out so always; whereupon the judge thinks the *probability* not sufficient to ground his sentence upon. The reason whereof is this, that the judge, while he hears the fact proved *probable*, conceives it as true. For the understanding has no object but *truth*. And therefore, by-and-by, when he shall hear *an instance* to the contrary, and thereby find that he had no necessity to think it *true*, presently changes his opinion, and thinks it *false*, and consequently not so much as *probable*. For he cannot at one time think the same thing both *probable* and *false;* and he that says a thing is *probable*, the meaning is, he thinks it *true*, but finds not arguments enough to prove it.

An enthymeme, from a *fallible sign*, is answered by *showing* the sign to be fallible.

An enthymeme from an *example*, is answered as an enthymeme from *probability; really* by showing *more examples* to the contrary; *apparently*, if he bring *examples* enough to make it seem *not necessary*.

BOOK II. 27. If the adversary have more examples than we, we must make it appear that they are not applicable to the case.

An enthymeme from an *infallible sign*, if the proposition be *true*, is unanswerable.

CHAPTER XXVIII.

AMPLIFICATION AND EXTENUATION ARE NOT COMMON PLACES. ENTHYMEMES, BY WHICH ARGUMENTS ARE ANSWERED, ARE THE SAME WITH THOSE BY WHICH THE MATTER IN QUESTION IS PROVED OR DISPROVED. OBJECTIONS ARE NOT ENTHYMEMES.

THE first, that *amplification* and *extenuation* are not *common places*, appears by this, that amplification and extenuation do prove a fact to be *great* or *little;* and are therefore enthymemes to be *drawn from* common places, and therefore are not the *places* themselves.

The second, that enthymemes, by which arguments are answered, are of the same kind with those by which the matter in question is proved, is manifest by this, that these infer the opposite of what was proved by the other.

The third, that an *objection* is no *enthymeme*, is apparent by this, that an *objection* is no more but an *opinion*, *example*, or other *instance*, produced to make appear that the adversary's argument does not conclude.

Thus much of *examples*, *sentences*, *enthymemes*, and generally of all things that belong to *argumentation;* from what *places* they may be drawn or answered.

There remain *elocution* and *disposition* to be spoken of in the next book.

BOOK III.

CHAPTER I.

OF THE ORIGINAL OF ELOCUTION AND PRONUNCIATION.

THREE things being necessary to an oration, namely *proof*, *elocution*, and *disposition*; we have done with the first, and shall speak of the other two in that which follows.

As for *action* or *pronunciation*, so much as is necessary for an orator may be fetched out of the book of the *Art of Poetry*, in which we have treated of the *action* of the *stage*. For *tragedians* were the first that invented such *action*, and that but of late; and it consisteth in governing well the *magnitude*, *tone*, and *measure* of the *voice*; a thing less subject to *art*, than is either *proof* or *elocution*.

And yet there have been rules delivered concerning it, as far forth as serve for *poetry*. But *oratorical action* has not been hitherto reduced to *art*. And *orators* in the beginning, when they saw that the *poets* in barren and feigned arguments nevertheless attained great reputation; supposing it had proceeded from the choice or connexion of words, fell into a style, by imitation of them, approaching to verse, and made choice of words. But when the *poets* changed their style, and laid by all words that were not in common use, the *orators* did the same, and lighted at last upon words and a government of the voice and measures proper to themselves.

BOOK III. 1.

Seeing therefore *pronunciation* or *action* are in some degree necessary also for an *orator*, the precepts thereof are to be fetched from the *Art of Poetry*.

In the meantime this may be one general rule. If the *words*, *tone*, *greatness* of the voice, *gesture* of the body and countenance, seem to proceed all from one passion, then it is well pronounced. Otherwise not. For when there appear more passions than one at once, the mind of the speaker appears unnatural and distracted. Otherwise, as the mind of the speaker, so the mind of the hearer always.

CHAPTER II.

OF THE CHOICE OF WORDS AND EPITHETS.

THE virtues of a *word* are two; the first, that it be *perspicuous;* the second, that it be *decent*, that is, neither *above* nor *below* the thing signified, or, neither too humble nor too fine.

Perspicuous are all words that be *proper*.

Fine words are those, that are *borrowed*, or *translated* from other significations; of which in the *Art of Poetry*.

The reason why *borrowed* words please, is this. Men are affected with *words*, as they are with *men;* admiring in both that which is *foreign* and *new*.

To make a *poem* graceful, many things help; but few an *oration*. For to a *poet* it sufficeth, with what *words* he can, to set out his *poem*. But an *orator* must not only do that, but also seem not to do it: for else he will be thought to speak un-

naturally, and not as he thinks; and thereby be the less believed; whereas *belief* is the scope of his oration.

The *words* that an *orator* ought to use are of three sorts; *proper*, such as are *received*, and *metaphors*.

Words taken from foreign languages, words compounded, and words new coined, are seldom to be used.

Synonymes belong to *poets*, and *equivocal* words to *sophisters*.

An orator if he use *proper* words, and *received* and *good metaphors*, shall both make his oration *beautiful*, and not seem to intend it; and shall speak *perspicuously*. For in a *metaphor* alone there is *perspicuity*, *novity*, and *sweetness*.

Concerning *metaphors* the rules are these:

1. He that will make the best of a thing, let him draw his *metaphor* from somewhat that is better. As for example, let him call a *crime* an *error*. On the other side, when he would make the worst of it, let him draw his *metaphor* from somewhat worse; as, calling *error*, *crime*.

2. A *metaphor* ought not to be so far-fetched, as that the similitude may not easily appear.

3. A *metaphor* ought to be drawn from the noblest things; as the *poets* do, that choose rather to say *rosy-fingered*, than *red-fingered Aurora*.

In like manner the rule of *epithets* is, that he that will adorn, should use those of the better sort; and he that will disgrace, should use those of the worse. As Simonides being to write an *ode* in honour of the victory gotten in a course by certain mules, being not well paid, called them by their

BOOK III. 2. name, Ἡμιόνους, that signifies their propinquity to asses: but having received a greater reward, styles them the *sons of swift-footed coursers.*

CHAPTER III.

OF THE THINGS THAT MAKE AN ORATION FLAT.

THE things that make an oration *flat* or *insipid*, are four:

1. *Words compounded.* And yet a man may compound a word, when the composition is necessary for want of a simple word, and easy, and seldom used.

2. *Foreign words.* As for example, such as are newly derived from the Latin; which though they were proper among them whose tongue it is, are foreign in another language: and yet these may be used, so it be moderately.

3. *Long, impertinent,* and *often epithets.*

4. *Metaphors indecent* and *obscure. Obscure* they are, when they are far-fetched. *Indecent,* when they are *ridiculous,* as in *comedies;* or *too grave,* as in *tragedies.*

CHAPTER IV.

OF A SIMILITUDE.

A *similitude* differs from a *metaphor* only by such particles of comparison as these; *as; even as; so; even so,* &c.

A *similitude* therefore is a *metaphor dilated;* and a *metaphor* is a *similitude contracted* into one word.

A *similitude* does well in an oration, so it be not too frequent; for it is poetical.

An example of the *similitude*, is this of Pericles, that said in his oration, *that the Bœotians were like so many oaks in a wood, that did nothing but beat one another.*

CHAPTER V.

OF THE PURITY OF LANGUAGE.

FOUR things are necessary to make language pure.

1. The right rendering of those *particles*, which some antecedent *particle* does require; as to a *not only*, a *not also;* and then they are rendered right, when they are not suspended too long.

2. *The use of proper words*, rather than *circumlocutions;* unless there be motive to make one do it of purpose.

3. That there be nothing of *double construction*, unless there be cause to do it of purpose; as the prophets of the heathen, who speak in general terms, to the end they may the better maintain the truth of their prophecies; which is easier maintained in *generals*, than in *particulars*. For it is easier to divine whether a number be *even* or *odd*, than *how many;* and that a thing *will be*, than *what* it will be.

4. Concordance of gender, number, and person; as not to say *him* for *her*, *man* for *men*, *hath* for *have*.

In sum, a man's language ought to be easy for another to read, pronounce, and point.

Besides, to divers *antecedents*, let divers *rela-*

BOOK III. 5. *tives*, or one common to them all, be correspondent; as, he *saw* the colour, he *heard* the sound; or he *perceived* both colour and sound: but by no means, *he heard or saw* both.

Lastly, that which is to be interposed by *parenthesis*, let it be done quickly: as, *I purposed, having spoken to him (to this, and to this purpose), afterward to be gone.* For to put it off thus; *I resolved, after I had spoken to him, to be gone; but the subject of my speech was to this and this purpose;* is vicious.

CHAPTER VI.

OF THE AMPLITUDE AND TENUITY OF LANGUAGE.

A MAN shall add *amplitude* or *dignity* to his language, but by such means as these.

1. By changing the *name* with the *definition*, as occasion shall serve. As, when the *name* shall be indecent, by using the *definition*; or contrary.
2. By *metaphors*.
3. By using the *plural* number for the *singular*.
4. By *privative epithets*.

CHAPTER VII.

OF THE CONVENIENCE OR DECENCY OF ELOCUTION.

Elocutions are made *decent*:

1. By speaking *feelingly*; that is, with such passion as is fit for the matter he is in; as, *angerly* in matter of *injury*.
2. By speaking as becomes the *person* of the *speaker*; as for a *gentleman* to speak *eruditely*.

3. By speaking *proportionably* to the matter; as of *great affairs* to speak in a *high*, and of *mean*, in a *low* style.

4. By abstaining from *compounded*, and from *out-landish words*: unless a man speak *passionately*, and have already moved, and, as it were, inebriated his hearers; or *ironically*.

It confers also to persuasion very much, to use these ordinary forms of speaking; *all men know*, *it is confessed by all*, *no man will deny*, and the like. For the hearer consents, surprised with the fear to be esteemed the only ignorant man.

It is good also, having used a word that signifies more than the matter requires, to abstain from the *pronunciation* and *countenance* that to such a word belongs; that the disproportion between it and the matter may the less appear. And when a man has said too much, it will show well to correct himself: for he will get belief by seeming to consider what he says. But in this a man must have a care not to be too precise in showing of this consideration. For the ostentation of carefulness is an argument oftentimes of lying; as may be observed in such as tell particularities not easily observed, when they would be thought to speak more precise truth than is required.

CHAPTER VIII.

OF TWO SORTS OF STYLES.

THERE be two sorts of *styles*. The one *continued*, or to be *comprehended at once*; the other *divided*, or *distinguished* by periods.

BOOK III. 8. The first sort was in use with ancient writers; but is now out of date. An example of this *style* is in the history of Herodotus; wherein there is no period till the end of the whole history.

In the other kind of *style*, that is distinguished by periods, a *period* is such a part as is perfect in itself; and has such length, as may easily be comprehended by the understanding.

This latter kind is pleasant, the former unpleasant; because this appears finite, the other infinite. In this the hearer has always somewhat set out, and terminated to him; in the other he foresees no end, and has nothing finished to him. This may easily be committed to memory, because of the measure and cadence; which is the cause that verses be easily remembered: the other not.

Every sentence ought to end with the *period*, and nothing to be interposed.

Period is either *simple*, or *divided into parts.*

Simple, is that which is *indivisible;* as, *I wonder you fear not their ends, whose actions you imitate.*

A *period divided*, is that which not only has perfection and length convenient for respiration, but also *parts.* As, *I wonder you are not afraid of their ends; seeing you imitate their actions:* where in these words, *I wonder you are not afraid of their ends*, is one *colon* or *part;* and in these, *seeing you imitate their actions*, another: and both together make the period.

The *parts or members*, and *periods*, of speech, ought neither be *too long*, nor *too short.*

Too long, are they which are produced beyond the expectation of the hearer. *Too short*, are they that end before he expects it.

Those that be *too long*, leave the hearer behind; like him that walking goes beyond the usual end of the walk, and thereby out-goes him that walks with him.

They that be *too short*, make the hearer stumble; for when he looks far before him, the end stops him before he be aware.

A *period* that is *divided* into parts, is either *divided only*; or has also an *opposition* of the *parts* one to another.

Divided only is such as this; *This the senate knows, the consul sees; and yet the man lives.*

A *period* with *opposition of parts*, called also *antithesis*, and the parts *antitheta*, is when *contrary parts* are put together, or also joined by a third.

Contrary parts are put together as here; *The one has obtained glory, the other riches; both by my benefit.*

Antitheta are therefore acceptable, because not only the *parts* appear the better for the *opposition*, but also for that they carry with them a certain appearance of that kind of enthymeme, which leads to *impossibility*.

Parts or *members* of a *period*, are said to be *equal*, when they have altogether, or almost, equal number of syllables.

Parts or *members* of a *period*, are said to be *like*, when they *begin* or *end* alike: and the more *similitudes*, and the greater *equality* there is of syllables, the more graceful is the period.

CHAPTER IX.

OF THOSE THINGS THAT GRACE AN ORATION, AND MAKE IT DELIGHTFUL.

BOOK III. 9. FORASMUCH as there is nothing more delightful to a man, than to find that he apprehends and learns easily; it necessarily follows, that those *words* are most *grateful* to the ear, that make a man seem to see before his eyes the things signified.

And therefore *foreign* words are unpleasant, because *obscure;* and *plain* words, because *too manifest*, making us learn nothing new. But *metaphors* please; for they beget in us, by the *genus*, or by some *common* thing to that with another, a kind of *science*. As when an *old man* is called *stubble;* a man suddenly learns that he grows up, flourisheth, and withers like grass, being put in mind of it by the qualities common to *stubble* and to *old men*.

That which a *metaphor* does, a *similitude* does the same; but with less *grace*, because with more *prolixity*.

Such enthymemes are the most *graceful*, which neither are presently very manifest, nor yet very hard to be understood; but are comprehended while they are uttering, or presently after, though not understood before.

The things that make a speech *graceful*, are these; *antitheta*, *metaphors*, and *animation*.

Of *antitheta* and *antithesis* hath been spoken in the precedent chapter.

Of *metaphors*, the most *graceful* is that which is drawn from *proportion*.

Aristotle, in the twelfth chapter of his *Poetry*, defines a *metaphor* to be the translation of a name from one signification to another; whereof he makes four kinds, 1. From the *general* to the *particular*. 2. From the *particular* to the *general*. 3. From one *particular* to another. 4. From *proportion*.

A metaphor from proportion is such as this; *A state without youth, is a year without a spring.*

Animation is that expression which makes us seem to see the thing before our eyes. As he that said, *The Athenians poured out their city into Sicily;* meaning, they sent thither the greatest army they could make. And this is the greatest grace of an oration.

If therefore in the same sentence there concur both *metaphor* and this *animation*, and also *antithesis*, it cannot choose but be very *graceful*.

That an oration is *graced* by metaphor, animation, and antithesis, hath been said: but *how* it is graced, is to be said in the next chapter.

CHAPTER X.

IN WHAT MANNER AN ORATION IS GRACED BY THE THINGS AFORESAID.

It is graced by *animation*, when the actions of living creatures are attributed to things without life; as when the *sword* is said to *devour*.

Such *metaphors* as these come into a man's mind by the observation of things that have similitude and proportion one to another. And the more unlike and unproportionable the things be otherwise, the more *grace* hath the *metaphor*.

BOOK III. 10.

A *metaphor* without *animation*, adds *grace* then, when the hearer finds he learns somewhat by such use of the word.

Also *paradoxes* are *graceful*, so men inwardly do believe them. For they have in them somewhat like to those jests that are grounded upon the similitude of words, which have usually one sense, and in the present another; and somewhat like to those jests which are grounded upon the deceiving of a man's expectation.

And *paragrams*, that is, allusions of words, are graceful, if they be well placed, and in periods not too long, and with *antithesis*. For by these means the ambiguity is taken away.

And the more of these, namely, *metaphor*, *animation*, *antithesis*, *equality of members*, a period hath, the more graceful it is.

Similitudes grace an oration, when they contain also a *metaphor*.

And *proverbs* are graceful, because they are *metaphors*, or translations of words from one species to another.

And *hyperboles*, because they also are *metaphors*. But they are youthful, and bewray vehemence; and are used with most grace by them that be angry; and for that cause are not comely in old men.

CHAPTER XI.

OF THE DIFFERENCE BETWEEN THE STYLE TO BE USED IN WRITING, AND THE STYLE TO BE USED IN PLEADING.

THE *style* that should be *read*, ought to be more

exact and accurate. But the *style* of a *pleader*, ought to be suited to action and pronunciation.

Orations of them that *plead*, pass away with the hearing. But those that are *written*, men carry about them, and are considered at leisure; and consequently must endure to be sifted and examined.

Written orations appear flat in *pleading*. And orations made for the *bar*, when the action is away, appear in *reading* insipid.

In *written* orations repetition is justly condemned. But in *pleadings*, by the help of action, and by some change in the *pleader*, repetition becomes amplification.

In *written* orations disjunctives do ill; as, *I came, I found him, I asked him:* for they seem superfluous, and but one thing, because they are not distinguished by action. But in *pleadings* it is amplification; because that which is but one thing, is made to seem many.

Of *pleadings*, that which is *judicial* ought to be more accurate than that which is *before the people*.

And an oration *to the people* ought to be more accommodate to action, than a *judicial*.

And of *judicial* orations, that ought to be more accurate, which is uttered to *few* judges; and that ought to be more accommodate to action, which is uttered to *many*. As in a *picture*, the further he stands off that beholds it, the less need there is that the colours be fine; so in *orations*, the further the hearer stands off, the less need there is for his oration to be elegant.

Therefore *demonstrative* orations are most proper for *writing*, the end whereof is to be *read*.

CHAPTER XII.

OF THE PARTS OF AN ORATION, AND THEIR ORDER.

BOOK III. 12. THE *necessary* parts of an oration are but two; *propositions* and *proof;* which are, as it were, the *problem* and *demonstration.*

The *proposition* is the explication or opening of the matter to be *proved.* And *proof* is the *demonstration* of the matter *propounded.*

To these *necessary parts* are sometimes added two other, the *proem* and the *epilogue*; neither of which is any *proof.*

So that in some there be *four parts* of an oration; the *proem;* the *proposition,* or as others call it, the *narration;* the *proofs,* which contain *confirmation, confutation, amplification, and diminution;* and the *epilogue.*

CHAPTER XIII.

OF THE PROEM.

THE *proem* is the beginning of an oration, and, as it were, the preparing of the way before one enter into it.

In some kinds of orations it resembles the *prelude* of *musicians,* who first play what they list, and afterwards the tune they intended. In other kinds it resembles the *prologue* of a *play,* that contains the argument.

Proems of the first sort, are most proper for *demonstrative* orations; in which a man is free to foretell, or not, what points he will insist upon. And for the most part it is better not; because when a man has not obliged himself to a certain matter, *digression* will seem *variety*; but if he have engaged himself, *variety* will be accounted *digression.*

In *demonstratives*, the matter of the *proem* consisteth in the *praise* or *dispraise* of some *law* or *custom*, or in *exhortation* or *dehortation*, or in something that serves to incline the hearer to the purpose.

Proems of the second kind are most proper for *judicial* orations. For as the *prologue* in a *dramatic*, and the *exordium* in an *epic* poem, setteth forth in few words the argument of the poem; so in a *judicial oration*, the orator ought to exhibit a model of his oration, that the mind of the hearer may not be suspended, and for want of foresight err or wander.

Whatsoever else belongs to a *proem*, is drawn from one of these four: from the *speaker*, from the *adversary*, from the *hearer*, or from the *matter*.

From the *speaker* and *adversary*, are drawn into proems such criminations and purgations as belong not to the cause.

To the *defendant*, it is necessary in the proem to answer to the accusations of his *adversary*; that those being cleared, he may have a more favourable entrance to the rest of his oration.

But to the *plaintiff*, it is better to cast his criminations all into the *epilogue*; that the judge may the more easily remember them.

From the *hearer* and from the *matter*, are drawn into the proem such things as serve to make the *hearer* favourable or angry, attentive or not attentive, as need shall require.

And *hearers* use to be attentive to *persons* that are reputed *good*; to *things* that are of *great consequence*, or that *concern themselves*, or that are *strange*, or that *delight*.

But to make the *hearer* attentive, is not the part

BOOK III. 13. of the *proem* only, but of any other part of the oration, and rather of any other part than of the proem. For the *hearer* is everywhere more remiss than in the beginning. And therefore wheresoever there is need, the orator must make appear both the *probity* of his own *person*, and that the *matter* in hand is of *great consequence*; or that it concerns the *hearer*, or that it is *new*, or that it is *delightful*.

He that will have the hearer attentive to *him*, but not to the *cause*, must on the other side make it seem that the *matter* is a *trifle* without relation to the *hearer*, *common* and *tedious*.

That the *hearer* may be favourable to the *speaker*, one of two things is required: that he *love* him, or that he *pity* him.

In *demonstrative* orations, he that *praises* shall have the *hearer* favourable, if he think himself or his own manners, or course of life, or anything he loves, comprehended in the same *praise*.

On the contrary, he that *dispraises* shall be heard favourably, if the *hearer* find his *enemies*, or *their courses*, or anything he *hates*, involved in the same *dispraise*.

The *proem* of a *deliberative* oration is taken from the same things from which are taken the *proems* of *judicial* orations. For the matter of a *deliberative* oration needeth not that natural *proem*, by which is shown what we are to speak of, for that is already known; the *proem* in these being made only for the *speaker's* or *adversary's* sake, or to make the *matter* appear *great* or *little*, as one would have it; and is therefore to be taken from the *persons* of the *plaintiff* or *defendant*, or from the *hearer*, or from the *matter*, as in orations *judicial*.

CHAPTER XIV.

PLACES OF CRIMINATION AND PURGATION.

BOOK III. 14.

ONE, from the *removal of ill opinion* in the hearer, imprinted in him by the adversary or otherwise.

Another from this: that the thing done is *not hurtful*, or *not to him*, or *not so much*, or *not unjust*, or *not great*, or *not dishonourable*.

A third from the *recompense*: as, *I did him harm, but withal I did him honour*.

A fourth from the *excuse*; as, *It was error, mischance*, or *constraint*.

A fifth from the *intention*; as, *One thing was done, another meant*.

A sixth from the *comprehension* of the accuser; as, *What I have done, the accuser has done the same*, or *his father, kinsman*, or *friend*.

A seventh from the *comprehension* of those that are in reputation; as, *What I did, such and such have done the same, who nevertheless are good men*.

An eighth from *comparison* with such as have been falsely accused or wrongfully suspected, and nevertheless found upright.

A ninth from *recrimination*; as, *The accuser is a man of ill life, and therefore not to be believed*.

A tenth from that the *judgment* belongs to another place, or time; as, *I have already answered*, or *am to answer elsewhere to this matter*.

An eleventh from *crimination* of the crimination: as, *It serves only to pervert judgment*.

A twelfth, which is common both to crimination and purgation, and is taken from *some sign*; as, *Teucer is not to be believed, because his mother was Priam's sister*. On the other side, *Teucer is to be believed, because his father was Priam's enemy*.

BOOK III. 14.

A thirteenth, proper to crimination only, from *praise and dispraise mixed;* as, to praise small things, and blame great ones; or to praise in many words, and blame with effectual ones; or to praise many things that are good, and then add one evil, but a great one.

A fourteenth, common both to *crimination* and *purgation*, is taken from the *interpretation of the fact*. For he that *purgeth* himself, *interpreteth the fact* always in the best sense; and he that *criminates*, always in the worst; as when Ulysses said, *Diomedes chose him for his companion, as the most able of the Grecians, to aid him in his exploit*: but his adversary said, *he chose him for his cowardice, as the most unlikely to share with him in the honour.*

CHAPTER XV.

OF THE NARRATION.

THE *narration* is not always continued, and of one piece; but sometimes, as in *demonstratives*, interrupted, and dispersed through the whole oration.

For there being in a *narration*, something that falls not under art; as namely, the actions themselves, which the orator inventeth not; he must therefore bring in the *narration* of them where he best may. As for example, if being to praise a man, you would make a *narration* of all his acts immediately from the beginning, and without interruption, you will find it necessary afterwards to repeat the same acts again, while from some of them you praise his valour, and from others his wisdom; whereby your oration shall have less variety, and shall less please.

It is not necessary always that the *narration* be

short. The true measure of it must be taken from the *matter* that is to be laid open.

In the *narration*, as oft as may be, it is good to insert somewhat commendable in one's self, and blameable in one's adversary: as, *I advised him, but he would take no counsel.*

In *narrations*, a man is to leave out whatsoever breeds compassion, indignation, &c. in the hearer beside the purpose; as Ulysses in Homer, relating his travels to Alcinous, to move compassion in him, is so long in it that it consists of divers books: but when he comes home, tells the same to his wife in thirty verses, leaving out what might make her sad.

The *narration* ought also to be in such words as argue the *manners*, that is some virtuous or vicious habit in him of whom we speak, although it be not expressed; as, *setting his arms a-kimbo, he answered, &c.;* by which is insinuated the pride of him that so answered.

In an *oration* a man does better to shew his affection than his judgment; that is, it is better to say, *I like this*, than to say, *this is better.* For by the one you would seem *wise*, by the other *good.* But *favour* follows *goodness;* whereas *wisdom* procures *envy.*

But if this affection seem incredible, then either a reason must be rendered, as did Antigone. For when she had said, *she loved her brother better than her husband or children;* she added, *for husband and children I may have more; but another brother I cannot, my parents being both dead.* Or else a man must use this form of speaking; *I know this affection of mine seems strange to you; but nevertheless it is such.* For it is not easily believed that any man has a mind to do any thing that is not for his own good.

BOOK III. 15.

Besides in a *narration*, not only the actions themselves, but the passions and signs that accompany them, are to be discovered.

And in his *narration* a man should make himself and his adversary be considered for such and such, as soon and as covertly as he can.

A *narration* may have need sometimes not to be in the beginning. In *deliberative* orations, that is, wheresoever the question is of things to come, a *narration*, which is always of things past, has no place. And yet things past may be recounted, that men may *deliberate* better of the future. But that is not as *narration*, but *proof*; for it is *example*.

There may also be *narration* in *deliberatives*, in that part where crimination and praise come in. But that part is not *deliberative*, but *demonstrative*.

CHAPTER XVI.

OF PROOF OR CONFIRMATION, AND REFUTATION.

Proofs are to be applied to something controverted.

The controversy in *judicial* orations is, whether it has been *done*; whether it has been *hurtful*; whether the matter be *so great*; and whether it be *just, or no.*

In a question of *fact*, one of the parties of necessity is faulty; for ignorance of the *fact* is no excuse; and therefore the *fact* is chiefly to be insisted on.

In *demonstratives*, the *fact* for the most part is supposed: but the *honour* and *profit* of the fact are to be *proved.*

In *deliberatives*, the question is, whether the thing *be like to be, or likely to be so great*; or whether it be *just*; or whether it be *profitable.*

Besides the application of the *proof* to the question, a man ought to observe whether his adversary have lied in any point without the cause. For it is a sign he does the same in the cause.

The *proofs* themselves are either *examples*, or *enthymemes*.

A *deliberative* oration, because it is of things to come, requireth rather *examples* than *enthymemes*.

But a *judicial* oration, being of things past, which have a necessity in them, and may be concluded syllogistically, requireth rather *enthymemes*.

Enthymemes ought not to come too thick together: for they hinder one another's force by confounding the hearer.

Nor ought a man to endeavour to prove everything by enthymeme, lest like some philosophers he collect what is *known*, from what is *less known*.

Nor ought a man to use enthymemes, when he would move the hearer to some affection. For seeing divers motions do mutually destroy or weaken one another, he will lose either the *enthymeme*, or the *affection* that he would move.

For the same reason, a man ought not to use enthymemes when he would express *manners*.

But whether he would move *affection*, or insinuate his *manners*, he may withal use *sentences*.

A *deliberative* oration is more difficult than a *judicial*, because it is of the *future;* whereas a *judicial* is of that which is *past*, and that consequently may be known; and because it has *principles*, namely, the *law;* and it is easier to *prove* from *principles*, than without.

Besides, a *deliberative* oration wants those helps of *turning to the adversary*, of *speaking of himself*, of *raising passion*.

BOOK III. 16. He therefore that wants matter in a deliberative oration, let him bring in some person to praise or dispraise. And in demonstratives, he that has nothing to say in *commendation* or *discommendation* of the *principal party*, let him *praise* or *dispraise* somebody else, as his *father* or *kinsman*, or the very *virtues* or *vices* themselves.

He that wants not *proofs*, let him not only *prove* strongly, but also insinuate his *manners*: but he that has no *proof*, let him nevertheless insinuate his *manners*. For a *good man* is as acceptable as an *exact oration*.

Of *proofs*, those that *lead to an absurdity*, please better than those that are *direct* or *ostensive*; because from the comparison of contraries, namely, *truth* and *falsity*, the force of the syllogism does the better appear.

Confutation is also a part of *proof*. And he that speaks first, puts it *after* his own proofs; unless the controversy contain many and different matters. And he that speaks last, puts it *before*. For it is necessary to make way for his own oration, by removing the objections of him that spake before. For the mind abhors both the man and his oration, that is damned beforehand.

If a man desire his *manners* should appear well, lest speaking of himself, he become odious, or troublesome, or obnoxious to obtrectation; or speaking of another, he seem contumelious or scurrilous; let him introduce another person.

Last of all, lest he cloy his hearer with *enthymemes*, let him vary them sometimes with *sentences*, but such as have the same force. As here is an *enthymeme*: *If it be then the best time to make peace, when the best conditions of peace may be*

had; then the time is now, while our fortune is entire. And this is a *sentence* of equal force to it: *Wise men make peace, while their fortune is entire.*

CHAPTER XVII.

OF INTERROGATIONS, ANSWERS, AND JESTS.

THE times when it is fit to ask one's adversary a *question,* are chiefly four.

The first is, when of two propositions that conclude an absurdity, he has already uttered one; and we would by *interrogation* draw him to confess the other.

The second, when of two propositions that conclude an absurdity, one is manifest of itself, and the other likely to be fetched out by a *question*; then the *interrogation* will be seasonable; and the absurd conclusion is presently to be inferred without adding that proposition which is manifest.

The third, when a man would make appear that his adversary does contradict himself.

The fourth, when a man would take from his adversary such shifts as these: *In some sort, it is so; in some sort, it is not so.*

Out of these cases, it is not fit to *interrogate.* For he whose question succeeds not, is thought vanquished.

To equivocal *questions* a man ought to answer fully, and not to be too brief.

To *interrogations,* which we foresee tend to draw from us an *answer* contrary to our purpose, we must, together with our *answer,* presently give an *answer* to the objection which is implied in the *question.*

And where the question exacteth an answer that

BOOK III. 17. concludeth against us, we must, together with our *answer*, presently *distinguish*.

Jests are dissolved by serious and grave discourse; and grave discourse is deluded by *jests*.

The several kinds of *jests* are set down in the *Art of Poetry*. Whereof one kind is *ironia*, and tends to please one's self. The other is *scurrility*, and tends to please others.

The latter of these has in it a kind of baseness: the former may become a man of good breeding.

CHAPTER XVIII.

OF THE EPILOGUE.

THE *epilogue* must consist of one of these four things.

Either of *inclining the judge to favour his own*, or *disfavour the adversary's side*. For then, when all is said in the cause, is the best season to *praise* or *dispraise* the parties.

Or of *amplification* or *diminution*. For when it appears what is good or evil, then is the time to show *how great* or *how little* that good or evil is.

Or in *moving the judge to anger*, *love*, or other passion. For when it is manifest of what kind, and how great the good or evil is, then it will be opportune to *excite* the judge.

Or of *repetition*, that the judge may remember what has been said.

Repetition consisteth in the *matter* and the *manner*. For the orator must show that he has performed what he promised in the beginning of his oration; and *how*, namely, by comparing his arguments one by one with his adversary's, repeating them in the same order they were spoken.

THE

ART OF RHETORIC

PLAINLY SET FORTH.

WITH PERTINENT EXAMPLES

FOR THE MORE EASY UNDERSTANDING AND PRACTICE OF THE SAME.

BY

THOMAS HOBBES OF MALMSBURY.

THE

ART OF RHETORIC.

CHAPTER I.

RHETORIC is an art of speaking finely. It hath two parts:

1. Garnishing of speech, called *elocution;*
2. Garnishing of the manner of utterance, called *pronunciation.*

Garnishing of speech is the first part of rhetoric; whereby the speech itself is beautified and made fine. It is either the fine manner of words, called a trope; or the fine shape or frame of speech, called a figure.

The fine manner of words is a garnishing of speech, whereby one word is drawn from its first proper signification to another; as in this sentence: *sin lieth at the door:* where *sin* is put for the punishment of sin adjoined unto it: *lieth at the door,* signifieth at hand; as that which lieth at the door, is ready to be brought in.

This changing of words was first found out by necessity, for the want of words; afterwards confirmed by delight, because such words are pleasant and gracious to the ear. Therefore this change of signification must be shamefaced, and, as it were, maidenly, that it may seem rather to be led by the hand to another signification, than to be driven by force unto the same.

CHAP. I.

Yet sometimes this fine manner of speech swerveth from this perfection; and then it is, either the abuse of this fine speech, called *katachresis*, or the excess of this fineness, called *hyperbole*.

Be not too just nor too wicked; which speech, although it seem very hard, yet it doth, not without some fineness of speech, utter thus much; *That one seek not a righteousness beyond the law of God; and that when none can live without all sin, yet that they take heed that sin bear not dominion over them.*

As, *My tears are my meat day and night. Those that hate me are more in number than the hairs of my head.* Both which do utter by an express of speech, a great sorrow, and a great number of enemies.

The abuse of speech is, when the change of speech is hard, strange, and unwonted, as in the first example.

The excess of speech is, when the change of signification is very high and lofty, as in the second example, and Psalms vi. vii.

But the excellency or fineness of words or tropes, is most excellent, when divers are *shut up in one*, or *continued in many*.

An example of the first sort is in 2 Kings ii. 9: *I pray thee, let me have a double portion of thy Spirit:* where by *Spirit* is meant the gift of the Spirit; and by *thy Spirit*, the gift of the spirit like to thine.

The *continuance* of tropes, called an allegory, is, when one kind of trope is so continued, as, look with what kind of matter it be begun, with the same it be ended. So in Psalm xxiii. *the care of*

God towards his church is set forth in the words proper to *a shepherd.* So in the whole book of Canticles, *the sweet conference of Christ and his church,* is set down by the words proper to *the husband and the wife.* So old age is set down by this garnishing of speech, in Ecclesiastes xii. 5, 6.

Hitherto of the properties of a fine manner of words, called a trope. Now the divers sorts do follow. They are those which note out, 1, no comparison, or are with some comparison; or, 2, no respect of division, or some respect.

The first is double: 1. The change of name, called a *metonymy.* 2. The mocking speech, called an *irony.*

The change of name is where the name of a thing is put for the name of a thing agreeing with it. It is double: 1. When the cause is put for the thing caused; and contrarywise. 2. When the thing to which anything is adjoined, is put for the thing adjoined; and contrarywise.

The change of name of the cause is when either the name of the *maker,* or the name of the *matter,* is put for the *thing made.*

Of the *maker,* when the finder out, or the author of the thing, or the instrument whereby the thing is done, is put for the *thing made.* So Moses is put for his writings: so love is put for liberality, or bestowing benefits, the fruit of love; so (Rom. i. 8): faith, the cause, is put for religious serving of God, the thing caused. So (James iii.) the tongue, the instrument of speech, is put for the speech itself. *Rule thy tongue.*

Of the *matter: Thou art dust, and to dust shalt thou return;* that is, *one made of dust.*

Now, on the other side, when the thing caused,

CHAP. I.

or the effect, is put for any of these causes. So *the Gospel of God* is called *the power of God to salvation;* that is, the instrument of the power of God. So *love* is said to be *bountiful,* because it causeth one to be bountiful. St. Paul saith, *The bread that we break, is it not in the communion of the body and blood of Christ?* That is, an instrument of the communion of the body of Christ. So *the body* is said to be an *earthly tabernacle;* that is, a tabernacle made of earth.

The change of name, or *metonymy,* where the subject, or that which hath anything adjoined, is put for the thing adjoined, or adjunct. So the place is put for those, or that in the place: *set thine house in order;* that is, thy household matters. *It shall be easier for Sodom and Gomorrha;* that is, the people in Sodom and Gomorrha. So *Moses' chair* is put for the *doctrine* taught in *Moses' chair.* So *all Jericho and Jerusalem came out;* that is, all the men in Jericho and Jerusalem. So before, *sin* was put for the *punishment of sin. Let his blood rest upon us and our children;* that is, the punishment which shall follow his death. So Christ said, *This is my body;* that is, a sign or sacrament of my body. *This wine is the new testament in my blood;* that is, a sign or seal of the new testament in my blood. So John saith, *I saw the Spirit descending in the likeness of a dove;* that is, the sign of the Spirit.

On the other side, the adjunct is put for the thing to which it is adjoined. As Christ (1 Tim. i. 1) is called *our hope*; that is, on whom our hope did depend. So, *we are justified by faith;* that is, by Christ applied by faith. So, *love is the fulfilling*

of the law; that is, those things to which it is adjoined. *Hope* for the *things hoped for;* as Rom. viii. 24. So in the Epistle to the Ephesians, v. 16: *The days are evil;* that is, the manner, conversation, and deeds of men in the days.

Hitherto the *metonymy*, or change of name. Now followeth the mocking speech, or *irony*.

CHAPTER II.

THE *mocking* trope is, when one contrary is signified by another; as God said, *Man is like to one of us.* So Christ saith, *Sleep on;* and yet by-and-by, *Arise, let us go.* So Paul saith, *You are wise, and I am a fool.*

This trope is conceived either by the contrariety of the matter, or the manner of utterance, or both. So Elijah said to the prophets of Baal, *Cry aloud,* &c. So the Jews said unto Christ, *Hail, King of the Jews!*

Hitherto appertaineth the passing by a thing, which yet with a certain elegance noteth it. So Philemon 19: *That I say not, thou owest thyself unto me.*

Hitherto of the fineness of words which respect no division. Now followeth that which respecteth division, called *synechdoche.*

A *synechdoche* is when the name of the whole is given to the part; or the name of the part to the whole. And it is double. 1. When the whole is put for the member, and contrarily. 2. When the general, or whole kind, is put for the special; or contrarily.

CHAP. II.

So St. John: *Not only for our sins, but for the sins of the whole world.* So righteousness, a member of goodness, is put for all goodness; so unrighteousness is put for all manner of sins.

Examples of the second sort, as these: So *Israel* is put for *those of Juda* sometimes. So *nations* for *the heathen. A minister* of Christ for *an apostle* of Christ, as Rom. xv. 16. *A minister* put for *a distributer*, as Rom. xii. 7.

On the other side, one sort or special is put for the whole sort or general, in the examples following. In the Lord's prayer, *bread, one* help of life, is put for *all* helps; *this day, one* time for *all* times. So Solomon saith, *the thing of the day in his day;* that is, the thing of the time in his time.

So sometimes less is spoken, and yet more is understood; which is called diminution, or *meiosis.* As James saith to him *that knoweth how to do well and doth it not, it is sin*; that is a great sin. So our Saviour Christ saith, *If they had not known, they had had no sin;* that is, no such great sin as they have now. Likewise the denial by comparison.

So Solomon saith, *Receive my words, and not silver;* that is, my words rather than silver. So Paul saith, *I was sent to preach, and not to baptize;* that is, not so much to baptize as to preach.

Hitherto of the fineness of words, which note out no comparison. Now followeth the fineness of words which noteth out comparison, called a *metaphor.*

CHAPTER III.

A *metaphor* is when the like is signified by the like : CHAP. III as (1 Cor. iii. 13) the Apostle saith, *doctrine must be tried by fire ;* that is, the evidence of the word, spirit, *trying doctrine*, as fire doth metals. So Christ is said to *baptize with fire ;* where *fire* is put for the power of the Holy Ghost, purging as fire. So Christ saith, *none shall enter into the kingdom of God but he that is born of the Holy Ghost and water.* So Paul calleth himself the *father* of the Corinthians, and said, *that he begat them in Christ.* So he calleth Timothy and Titus his natural *sons in the faith.*

Hitherto of a trope or garnishing of speech in one word, where the metaphor is most usual ; then the change of name ; then the *synechdoche ;* and last of all, the *irony.* Now followeth the fine frame or shape of speech, called a figure.

A figure is a garnishing of speech wherein the course of the same is changed, from the more simple and plain manner of speaking unto that which is more full of excellency and grace. For as in the fineness of words, or a trope, words are considered asunder by themselves ; so in the fine shape or frame of speech, or a figure, the apt and pleasant joining together of many words is noted.

The garnishing of the shape of speech, or a figure, is garnishing of speech in words, or in a sentence.

The garnishing of speech in words, called *figura dictionis*, is wherein the speech is garnished by the pleasant and sweet sound of words joined together.

This is either in the *measure* of sounds ; or in the *repetition* of sounds.

CHAP. III.

The *measure* of sounds is belonging either to poets, with us called rhymers; or orators, with us called eloquent pleaders.

The first is the measure of sounds by certain and continual spaces; and it is either rhyme or verse.

Rhyme is the first sort, containing a certain measure of syllables ending alike; and these in the mother tongues are most fit for psalms, songs, or sonnets.

Verses are the second sort, containing certain feet fitly placed.

A foot is a measure framed by the length and shortness of syllables; for the several sorts whereof, as also of the verses of them, because we have no worthy examples in our English tongue, we judge the large handling of them should be more curious than necessary.

The measure of sounds belonging to orators, is that which, as it is not uncertain, so it differeth altogether from rhyme and verse, and is very changeable with itself. Therefore in that eloquent speech you must altogether leave rhyme and verse, unless you allege it for authority and pleasure.

In the beginning of the sentence little care is to be had, in the middle least of all, and in the end chiefest regard is to be had; because the fall of the sentence is most marked, and therefore lest it fall out to be harsh and unpleasant both to the mind and ear, there must be most variety and change.

Now this change must not be above six syllables from the end, and that must be set down in feet of two syllables.

And thus much of garnishing of speech by the *measure* of sounds, rather to give some taste of the

same to the readers, than to draw any to the curious and unnecessary practice of it. CHAP. III.

Now followeth the *repeating* of sounds.

CHAPTER IV.

Repetition of sounds is either of the *like*, or the *unlike* sound.

Of the *like*, is either *continued* to the end of, or *broken* off from, the *same*, or a *diverse* sentence.

Continued to the end of the *same* sentence is, when the same sound is repeated without anything coming between, except a parenthesis; that is, something put in, without the which, notwithstanding, the sentence is full. And it is a joining of the same sound, as Rom. i. 29: *All unrighteousness, fornication, wickedness.* And in the prayer of Christ, *My God, my God. From men by thine hand, O Lord, from men*, &c. (Psalm xvii. 14.)

Continued in a *diverse* sentence is, either a redoubling, called *anadyplosis;* or a pleasant climbing, called *climax.*

Redoubling is when the same sound is repeated in the end of the former sentence, and the beginning of the sentence following. As Psalm ix. 9: *The Lord also will be a refuge to the poor, a refuge, I say, in due time.* Psalm xlviii. 14: *For this God is our God.* But more plain in Psalm xlviii. 8: *As we have heard, so have we seen in the city of our God: God will establish it for ever.*

A pleasant climbing, is a redoubling continued by divers degrees or steps of the same sounds: as Rom. viii. 17: *If we be children, we be heirs,*

CHAP. IV. *even heirs of God, annexed with Christ.* Rom. viii. 30: *Whom he predestinated, them also he called; and whom he called, them also he justified; and whom he justified, them also he glorified.* Also Rom. ix. 14, 15.

And hitherto of the same sound *continued to the end.* Now followeth the same sound *broken off.*

CHAPTER V.

THE same sound *broken off*, is a repetition of the same in the *beginning* or in the *end.*

In the *beginning*, it is called *anaphora*, a bringing of the same again; as Rom. viii. 38, 39: *Nor death, nor life, nor angels, &c. nor any other creature, shall be able to separate us, &c.* So likewise Ephes. iv. 11: *Some to be apostles, some preachers, &c.* So Galatians ii. 14: *Nor Jew, Gentile, &c.* So likewise Hebrews xi. 1, 2.

Repetition of the same sound *in the end,* is called *epistrophe,* a turning to the same sound in the end. So Ezekiel viii. 15: *Behold greater abominations than these.* Lament. iii. 41, &c.: *Let us lift up our hearts with our hands unto God in the heavens; we have sinned and have rebelled; therefore thou hast not spared.*

When both of these are joined together, it is called a coupling or symplote. As 2 Cor. vi. 4-11: *But in all things we approve ourselves as the ministers of God, in much patience, in afflictions, &c.* See also 2 Cor. xi. 23.

Hitherto of the repetitions in the *same place.* Now of those that do interchange their place.

They are either *epanalepsis,* which signifieth to

take back; or *epanados,* which signifies the turning to the same tune. CHAP. V.

The first is when the same sound is repeated in the beginning and the ending; as, 2 Sam. xviii. 33: *My son Absolom, my son.*

Epanados is when the same sound is repeated in the beginning and the middle, in the middle and the end. Ezekiel xxxv, 6: *I will prepare thee unto blood, and blood shall pursue thee: except thou hate blood, even blood shall pursue thee.* And 2 Thes. ii. 4: *So that he that doth sit as God, in the temple of God, sheweth himself that he is God.*

Hitherto of the repetition of those sounds which are *like.* Now of those that are *unlike.*

CHAPTER VI.

Unlike; a small changing of the name, as παρονομασια; a small changing of the end or case, as πολυπτωτον.

A small change of name is, when a word, by the change of one letter or syllable, the signification also is changed; as, Rom. v. 4: *Patience, experience; and experience, hope.* 2 Cor. x. 3: *We walk after the flesh, not war in the flesh.* 2 Cor. vi. 8-9: *So by honour and dishonour, as unknown and yet known.*

A small changing of the end or case, is when words of the same beginning rebound by divers ends: *Christ being raised from the dead, dieth no more, death hath no more power over him. He that doth righteousness, is righteous. If ye know that he is righteous, know ye that he that doeth righteously, is born of him.* And of both these

CHAP. VI. there are many in the Scripture; but the translations cannot reach them.

Hitherto of the garnishing of the shape of speech, in *words*. Now followeth the garnishing of the shape of speech, in a *sentence*.

CHAPTER VII.

GARNISHING of the frame of speech in a *sentence*, is a garnishing of the shape of speech, or a figure; which for the forcible moving of affections, doth after a sort beautify the sense and very meaning of a sentence. Because it hath in it a certain manly majesty, which far surpasseth the soft delicacy or dainties of the former figures.

It is either the garnishing of speech *alone*, or *with others*.

The garnishing of speech *alone*, is when as the sentence is garnished without speech had to other. And it is either in regard of the *matter*; or of the *person*.

In regard of the *matter*; it is either a crying out, called *exclamation*; or a pulling or calling back of himself, called *revocation*.

A crying out, or *exclamation*, is the first, which is set forth by a word of calling out. Sometimes of wonder, as, Rom. xi. 33: *O the depth of the judgments of God!* Psal. viii. 1: *O Lord, how excellent is thy name!* Sometimes of pity; also these words, *Behold, Alas, Oh,* be signs of this figure, as, *O Jerusalem, Jerusalem, which stonest the prophets.* Sometimes of desperation; as, *My sin is greater than can be forgiven. Behold, thou drivest me out, &c.* Sometimes of wishing: as, Psalm lxxxiv. 1: *O Lord of hosts, how amiable are thy taberna-*

cles! Sometimes of disdaining: as, Rom. vii. 24: *O miserable wretch that I am, who shall deliver me from this body of sin!* Sometimes of mocking: as they which said to our Saviour Christ, *Ah, thou that, &c.* Sometimes of cursing and detestation; as in David, *Let their table be made a snare, and bow down their back always.*

Also when this figure is used in the end of a sentence, it is called a shooting out of the voice or επιφωνημα; as when the sins of Jezebel were spoken against, this is added at the end, *Seemed it a little to her to do thus and thus.*

So after the high setting forth of the name of God, David shutteth up his praise with this: *Blessed be his glorious name, and let all the earth be filled with his glory.* Sometimes here is used a certain liberty of speech, wherein is a kind of secret crying out: as Peter (Acts iii. 12,) saith: *Ye men of Israel, hear these words.* And Paul, (2 Cor. xi. 1): *Would to God you could suffer a little my foolishness, and indeed ye suffer me.*

Thus much of crying out. Now followeth the figure of calling back, or *revocation.*

Revocation is when any thing is called back; and it is as it were a cooling and quenching of the heat of the exclamation that went before.

And this is either a *correction* of one's self, called επανορθωσις; or a *holding* of one's *peace,* called αποσιωπησις.

Επανορθωσις is correction, when something is called back that went before: as Paul correcteth his doubtfulness of Agrippa's belief, when he saith, *Believest thou, King Agrippa? I know thou believest.* So, 1 Cor. xv. 10: *I laboured more abundantly than they all, yet not I,* &c.

CHAP. VII. A *keeping of silence*, or αποσιωπησις, is when the course of the sentence bygone is so stayed, as thereby some part of the sentence, not being uttered, may be understood. So our Saviour Christ (John xii. 27) saith, *My soul is heavy: what shall I say?*

Thus much of a figure garnishing the speech alone, in regard of the *matter*. Now followeth the garnishing of the speech alone, in regard of the *person*.

CHAPTER VIII.

GARNISHING of the speech alone in regard of the *person*, is double: either in turning to the person called *apostrophe;* or feigning of the person, called *prosopopœia*.

Apostrophe, or turning to the person, is when the speech is turned to another person than the speech appointed did intend or require. And this *apostrophe* or turning is diversely seen, according to the diversity of persons. Sometimes it turneth to a man's person; as David in the sixth Psalm, where having gathered arguments of his safety, turneth hastily to the wicked, saying, *Away from me, all ye workers of iniquity; for the Lord hath heard the voice of my petition.*

Sometimes from a man to God, as Psalm iii. 3. David being dismayed with the number of his enemies, turneth himself to God, saying: *But thou art my buckler*, &c.

Sometimes to unreasonable creatures without sense; as Isaiah i. and Isaiah xxi.

Prosopopœia, or a feigning of the person, is whereby we do feign another person speaking in our speech. And it is double; *imperfect* and *perfect*.

Imperfect is when the speech of another person is set down lightly and indirectly. As in Psalm. xi. 1. David bringeth in the wicked, *Who say unto my soul, fly as the bird unto yonder hill.*

A perfect *prosopopœia*, is when the whole feigning of the person is set down in our speech, with a fit entering into the same, and a leaving it off. So Wisdom, (Prov. viii.); where the entrance is in the first verses, her speech in the rest of the chapter.

Hitherto of the figures of sentences concerning one speaking alone. Now follow the other, which concern the speeches of two.

CHAPTER IX.

THEY which concern the speeches of two, are either in *asking*, or in *answering*.

That of *asking*, is either in *deliberation;* or in *preventing an objection.*

Deliberation is when we do every now and then ask, as it were, reasons of our consultation, whereby the mind of the hearers wavering in doubt, doth set down some great thing.

This deliberation is either in *doubting*, or in *communication.*

A *doubting* is a deliberating with ourselves, as Paul (1 Philipp. i. 23,24), doubting whether it were better to die than to live, he garnisheth his speech in this manner: *For I am greatly in doubt on both sides, desiring to be loosed, and to be with Christ, which is best of all: nevertheless, to abide in the flesh is more needful for you.*

Communication is a deliberation with others. As, Galatians iii. 1, 2: *O foolish Galatians, who hath bewitched you, &c.*

CHAP. IX. And hitherto of the figure of speech between two, called *deliberation.*

Now followeth the figure of speech between two, called the *preventing of an objection,* or *occupation.*

Occupation is, when we do bring an objection, and yield an answer unto it. Therefore this speech between two, in the first part, is called the setting down of the objection or occupation: in the latter part, an answering of the objection or the subjection: as Rom. vi. 1: *What shall we say then? Shall we continue still in sin, that grace may abound?* In which words is set down the objection: the answering in these words, *God forbid.* And here this must be marked, that the objection is many times wanting, which must be wisely supplied by considering the occasion and answer of it: as 1 Tim. v. 11,12: *They will marry, having condemnation.* Now lest any might say, what, *for marrying?* He answereth: *No, for denying their first faith.*

Hitherto of the figures of *asking.* Now followeth the figures of *answering.* They are either in *suffering* of a deed, called *permission;* or, *granting* of an argument, called *concession.*

Suffering of a deed or permission is, when mockingly we give liberty to any deed, being never so filthy; as Rev. xxii. 11: *Let him that is filthy, be filthy still.* And 1 Cor. xiv. 38: *If any be ignorant, let him be ignorant.*

Concession or granting of an argument is, when an argument is mockingly yielded unto, as Ecclesiastes xi. 9: *Rejoice, O young man, in thy youth, and let thy heart cheer thee, &c.*

a long time of prayer say, *Let us pray.* And this fallacy our Saviour Christ (Matt. vi. 5) condemneth in prayer. And this is a fault in method. Sophistry.

Special are those, which may be referred to certain parts of logic, and they are of two sorts. Such as are referred to the spring of reasons, called *invention;* or to judgment.

Those referred to invention, are when anything is put for a reason, which is not; as no cause for a cause, no effect for an effect; and so of the rest.

In the distribution this is a proper fallacy, when anything simply or generally granted, thereby is inferred a certain respect or special not meant nor intended: as,

He that saith there are not seven sacraments, saith true.

He that saith there are only three, saith there are not seven.

Therefore he that saith there are three, saith true.

The right answer is, that the proposition is not necessarily true; for there may be a way to say there are not seven, and yet affirm an untruth.

Fallacies of judgment, are those that are referred to the judgment of one sentence, or of more.

Of one sentence, either to the proprieties of an axiom, or to the sorts.

To the proprieties, as when a true is put for a false, and contrarily: an affirmative for a negative, and contrarily. So some take the words of St. John, *I do not say concerning it, that you shall not pray,* for no denial; when as it doth deny to pray for that sin.

To the sorts, are referred either to the simple or compound.

Sophistry. The first, when the general is taken for the special, and contrarily. So the Papists, by this fallacy, do answer to that general saying of Paul; *We are justified with faith without the works of the law:* which they understand of works done before faith, when that was never called in doubt.

The fallacies which are referred to a compound axiom, are those which are referred either to a *disjoined*, or *knitting* axiom. To a *disjoined* axiom, when the parts indeed are not *disjoined:* as, *Solomon was either a king, or did bear rule.*

To a *knitting* axiom, is when the parts are not necessarily knit together; as, *If Rome be on fire, the Pope's chair is burnt.*

And hitherto of the first sort of fallacies referred to judgment. Now followeth the second.

And they be either those that are referred to a *syllogism*; or to *method.* And they again are *general*, and *special. General*, which are referred to the general properties of a syllogism. It is either when all the parts are *denied;* or are *particular.* All parts denied: as,

No pope is a devil.

No man is a devil.

Therefore no man is a pope.

And this must be answered, that it is not according to the definition of a negative syllogism, which must always have one affirmative.

All particular: as, *some unlawful thing must be suffered; as, namely, that which cannot be taken away,*

The stews is some unlawful thing.

Therefore the stews must be suffered.

This is answered, by the definition of a special syllogism; which is, that hath one part general.

The *special*, are those which are simple or compound.

The *simple* is of two sorts. The first is more plain. The second less plain.

More plain, is when the assumption is denied, or the question is not particular: as,

Every apostle may preach abroad:
Some apostle is not a pope,
Therefore some pope may not preach abroad.
Also, *every pope is a lord:*
Some pope may give an universal license.
Therefore every lord may give an universal license.

Less plain, hath one fallacy in common, when the proposition is special: as,

Some player is a rogue:
Every vagabond is a rogue,
Therefore every player is a vagabond.
Also, *some player is a rogue:*
Every vagabond is a player,
Therefore every player is a rogue.

The fallacy of the first kind, is when all the parts be affirmative: as,

All Paul's bishops were ordained for unity.
All archbishops be ordained for unity.
Therefore all archbishops are Paul's bishops.

The fallacy of the second kind is when the assumption is denied: as,

Every puritan is a Christian.
No Lord Bishop is a puritan,
Therefore no Lord Bishop is a Christian.

Hitherto of the fallacies referred to a *simple* syllogism. Now follow those which are referred to a *compound*; which are those which are referred either to the *connexive*, or to the *disjoined*.

Sophistry.

Of the first sort, one is when the first part or antecedent is denied, that the second or consequent may be so likewise: as,

If any man have two benefices, he may escape unpunished at the bishop's hands.

But he may not have two benefices,

Therefore he may not escape unpunished at the bishop's hands.

The second part is affirmed, that the first may be so also: as,

If every ignorant minister were put out of the church, and a preacher in his place, we should have good order,

But we have good order.

Therefore every ignorant minister is put out of the church, and a preacher in his place.

Of those referred to the disjoined, the first is when all the parts of the disjunction or proposition are not affirmed: as,

Every ignorant minister is to be allowed, or not.

But he is not.

Therefore he is.

The second kind, is when the second part of the copulative negative axiom is denied, that the first may be so: as,

A non-resident is either a faithful, or unfaithful minister.

But he is unfaithful. Ergo, &c.

And thus much of the fallacies in a syllogism.

The fallacy in method is when, to deceive withal, the end is set in the beginning, the special before the general; good order be gone, confounded; and finally when darkness, length, and hardness, is laboured after.

END OF VOL. VI.

THE ART OF SOPHISTRY.

Although the rules of Sophistry be needless for them that be perfect in logic; yet because the knowledge of them bringeth some profit to the young beginners, both for the ready answering of the subtle arguments, and the better practising of logic and rhetoric, we have thought good to turn it into the English tongue.

Sophistry.

Sophistry is the feigned art of *elenches*, or coloured reasons.

A coloured reason, or *elench*, is a show of reason to deceive withal. It is either when the deceit lieth in the *words*; or in the default of logic, called a *sophism*.

In *words*, is either when the deceit lieth in *one word*; or in *words joined together*. *If it were, it should be, whosoever.*

In *one word*, is either the *darkness* of a word; or, the *doubtfulness* of a word.

The *darkness* of a word, or an insolence, deceiveth, when by a reason the meaning is not understood, whether the strangeness be through the oldness, newness, or swelling vanity of the words; and of the last sort is that spoken of in 2 Peter ii. 18.

By this fallacy the Papists conclude, the Fathers to be on their side for deserving by good works.

Whosoever saith man's merits are crowned, they say man's works do deserve.

But the Fathers say, man's merits are crowned.

Therefore the Fathers say, man's works do deserve.

Sophistry. Where *merits* is an old word, put for any works done under the hope of reward, whether it come by desert or freedom of promise.

Doubtfulness of a word, *likeness* of name, is either called *homonymia;* or by a trope or fineness of speech.

The *likeness* of name, or *homonymia*, is when one word is given to signify divers things: as,

He that believeth shall be saved.

The hypocrites to whom our Saviour Christ would not commit himself, believed,

Therefore they shall be saved.

Where faith doth note out both a justifying faith, and a dead faith.

Doubtfulness by a trope, is when a word is taken properly, which is meant figuratively or contrarily: As, *That which Christ saith is true.*

Christ saith that bread is his body.

Therefore it is true.

Where by *body* is meant the sign or sacrament of his body.

Unto the first, a perfect logician would answer, that the proposition is not an axiom necessarily true, according to the rule of truth, because of the doubtfulness of the old and new signification of *merit*. And if the word be far worn out of use, that it be not understood, then the answer must be, I understand it not, or put your axiom in plain words.

To the second he would answer, that the proposition or first part is not according to the rule of righteousness, because the proper subject and adjunct are not joined together: which *hath justifying faith, or believing sincerely, shall be saved;* and then the assumption being in the same sense inferred is false.

Sophistry.

Unto the third he would answer, that the assumption is not necessarily true; because if the word *body* be taken properly, it is not then true that is set down; but if it be taken figuratively, it is true, and therefore would bid him make the assumption necessarily true, and then say, Christ saith in proper words, *it is my body;* and then it is false.

Hitherto of the fallacies in single words. Now of those that are joined together.

It is either *amphibolia*, or the doubtfulness of speech: or *exposition*, or unapt setting down of the reason.

The first is, when there is doubtfulness in the frame of speech; as thus, *if any obey not our word by a letter, note him:* where some refer *by a letter*, to the first part of the sentence, and some to the latter; where the signification of the word and right pointing doth show that it must be referred to the first.

The answer is, that the right and wise placing of the sentence is perverted.

Unapt setting down of the reason, is when the parts of the question and the reasons entreated, are not set down in fit words: as,

All sin is evil.

Every child of God doth sin.

Therefore every child of God is evil.

Here the answer according to logic, is that the assumption doth not take the argument out of the proposition, but putteth in another thing; and so it is no right frame of concluding, as appeareth by the definition of the assumption.

Hitherto of the deceits of reason, which lie in *words*. Now of the default of logic, called *sophism*.

It is either *general* or *special*. The *general*

Sophistry. are those which cannot be referred to any part *of logic*. They are either begging of the question, called the petition of the principle; or bragging of no proof.

Begging of the question, is when nothing is brought to prove but the question, or that which is doubtful: as,

That righteousness, which is both by faith and works, doth justify.

But this righteousness, is inherent righteousness: Ergo.

Here the proposition in effect is nothing but a question.

If together with the blood of Christ, we must make perfect satisfaction for our sins before we come to heaven; then there must be purgatory for them that die without perfection.

But the first is so: Ergo.

Where the argument they bring is as doubtful, and needeth as much proof, as the question.

The answer is this, out of the definition of the syllogism; that there is no new argument invented; therefore it cannot be a certain frame of concluding.

Bragging of no proof, is when that which is brought is too much, called *redounding*.

It is either impertinent to another matter, called *heterogenium;* or a vain repetition, called *tautologia.*

Impertinent, or not to the purpose, is when anything is brought for a proof, which is nothing near to the matter in hand; whereunto the common proverb giveth answer, *I ask you of cheese, you answer me of chalk.*

A vain repetition, is when the same thing in effect, though not in words, is repeated; as they that after